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Legislative History – Montana Session Law

Chapter: 394 Session L: 2017
Bill Number: SB 153

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☑
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 3/31/2017	Hearing Date(s): 2/2/2017
Committee Report: 4/7/2017	Committee Report: 2/7/2017

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: June 20, 2025

Thank you!

Notes: Audio/Video recordings can be found here:
https://sg001-harmony.sliq.net/00309/Harmony/en
Specific records for SB 153: https://bills.legmt.gov/#/bill/20171/LC2289?open_tab=sum

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
05/19/17	Chapter Number Assigned				
05/19/17	(S) Signed by Governor				
05/17/17	(S) Transmitted to Governor				
05/10/17	(H) Signed by Speaker				
05/04/17	(S) Signed by President				
04/26/17	(C) Printed - Enrolled Version Available				
04/25/17	(S) Returned from Enrolling				
04/24/17	(S) Sent to Enrolling				
04/22/17	(H) Returned to Senate				
04/22/17	(H) 3rd Reading Concurred		90	10	
04/22/17	(H) Scheduled for 3rd Reading				
04/21/17	(H) 2nd Reading Concurred		88	11	
04/21/17	(H) Scheduled for 2nd Reading				
04/07/17	(H) Committee Report--Bill Concurred	(H) Judiciary			
04/07/17	(H) Committee Executive Action--Bill Concurred	(H) Judiciary	15	4	
03/31/17	(H) Hearing	(H) Judiciary			
03/24/17	(H) Hearing Canceled	(H) Judiciary			
02/16/17	(H) First Reading				
02/16/17	(H) Referred to Committee	(H) Judiciary			
02/14/17	(S) Transmitted to House				
02/14/17	(S) 3rd Reading Passed		43	6	
02/14/17	(S) Scheduled for 3rd Reading				
02/13/17	(S) 2nd Reading Passed		45	5	
02/13/17	(S) Scheduled for 2nd Reading				
02/09/17	(C) Printed - New Version Available				
02/08/17	(S) Committee Report--Bill Passed as Amended	(S) Judiciary			
02/07/17	(S) Committee Executive Action--Bill Passed as Amended	(S) Judiciary	8	2	
02/02/17	(S) Hearing	(S) Judiciary			
02/01/17	(S) Fiscal Note Printed				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
02/01/17	(S) Fiscal Note Signed				
01/31/17	(S) Fiscal Note Received				
01/25/17	(C) Introduced Bill Text Available Electronically				
01/25/17	(S) Referred to Committee	(S) Judiciary			
01/25/17	(S) First Reading				
01/25/17	(S) Introduced				
01/25/17	(S) Fiscal Note Requested				
01/25/17	(C) Draft Delivered to Requester				
01/24/17	(C) Draft Ready for Delivery				
01/24/17	(C) Executive Director Final Review				
01/24/17	(C) Draft in Assembly				
01/24/17	(C) Executive Director Review				
01/24/17	(C) Bill Draft Text Available Electronically				
01/24/17	(C) Draft in Final Drafter Review				
01/23/17	(C) Draft in Input/Proofing				
01/23/17	(C) Draft to Drafter - Edit Review [KWK]				
01/20/17	(C) Draft in Edit				
01/20/17	(C) Draft in Legal Review				
01/20/17	(C) Fiscal Note Probable				
01/19/17	(C) Draft to Requester for Review				
12/30/16	(C) Draft Request Received				

AN ACT CREATING THE OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER; AMENDING SECTIONS 40-15-102, 40-4-219, 41-3-301, 44-4-311, 45-5-206, 45-5-209, 46-1-502, 46-6-311, 46-9-108, 46-9-302, 46-16-226, 46-18-219, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Strangulation of a partner or family member. (1) A person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by:

(a) applying pressure on the throat or neck of the partner or family member; or

(b) blocking air flow to the nose and mouth of the partner or family member.

(2) (a) A person convicted of a first offense of strangulation of a partner or family member shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(b) A person convicted of a second or subsequent offense under this section shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined an amount not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) A person convicted of strangulation of a partner or family member is required to pay for and complete a counseling assessment as required in 45-5-206(4).

(4) For the purposes of this section, "partner" and "family member" have the meanings provided in 45-5-206.

Section 2. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family

member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) strangulation of a partner or family member as defined in [section 1];

~~(ix)~~(x) unlawful restraint as defined in 45-5-301;

~~(x)~~(xi) kidnapping as defined in 45-5-302;

~~(xi)~~(xii) aggravated kidnapping as defined in 45-5-303; or

~~(xii)~~(xiii) arson as defined in 45-6-103.

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Section 3. Section 40-4-219, MCA, is amended to read:

"40-4-219. Amendment of parenting plan -- mediation. (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently:

(i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent; or

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent ~~pursuant to~~

~~40-4-221~~.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625; and

(xi) strangulation of a partner or family member, as described in [section 1].

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting

plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

Section 4. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in [section 1], against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult

member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must

be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2017--sec. 7, Ch. 376, L. 2015.)"

Section 5. Section 44-4-311, MCA, is amended to read:

"44-4-311. Domestic violence intervention program. (1) The Montana board of crime control shall use the money in the domestic violence intervention account established by 44-4-310 to fund a domestic violence intervention program to provide grants to communities for misdemeanor probation officers or compliance officers to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family member assault under 45-5-206, the offense of strangulation of a partner or family member under [section 1], or of a violation of an order of protection under 45-5-626.

(2) In administering the domestic violence intervention program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement 44-4-310 through 44-4-313."

Section 6. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family member assault -- penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family

member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) For the purpose of determining the number of convictions under this section, a conviction means:

(i) a conviction, as defined in 45-2-101, under this section;

(ii) a conviction for domestic abuse under this section;

(iii) a conviction for a violation of a statute similar to this section in another state;

(iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under 45-5-202 or assault with a weapon under 45-5-213;

(v) a conviction for strangulation of a partner or family member under [section 1];

~~(v)~~(vi) a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in this section, regardless of what the offense is named or whether it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202, 45-5-213, or this section; or

~~(vi)~~(vii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

Section 7. Section 45-5-209, MCA, is amended to read:

"45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with or arrested for an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 or, if the victim is a partner or family member of the defendant, violations of 45-5-202, ~~or~~ 45-5-213, or [section 1] at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of a no contact order.

(c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."

Section 8. Section 46-1-502, MCA, is amended to read:

"46-1-502. Mediation. (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

(a) deliberate homicide, as described in 45-5-102;

(b) mitigated deliberate homicide, as described in 45-5-103;

(c) intimidation, as described in 45-5-203;

(d) partner or family member assault, as described in 45-5-206;

(e) assault on a minor, as described in 45-5-212;

(f) strangulation of a partner or family member, as described in [section 1];

~~(f)~~(g) stalking, as described in 45-5-220;

~~(g)~~(h) aggravated kidnapping, as described in 45-5-303;

~~(h)~~(i) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, or 45-5-507;

~~(i)~~(j) endangering the welfare of children, as described in 45-5-622;

~~(j)~~(k) sexual abuse of children, as described in 45-5-625; or

~~(k)~~(l) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations."

Section 9. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining

order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.

(3) If a judge has issued a standing order as provided in 45-5-209, a peace officer shall give a defendant charged with or arrested for partner or family member assault or a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] if the victim is a partner or family member of the defendant, both written and verbal notice of the no contact order issued pursuant to 45-5-209. The notice must include specific conditions as ordered by the court."

Section 10. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation of a partner or family member the restrictions contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

(k) the defendant shall furnish bail in accordance with 46-9-401; or

(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, [section 1], 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 11. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a

schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

(b) strangulation of a partner or family member, as defined in [section 1];

~~(b)~~(c) stalking, as defined in 45-5-220;

~~(c)~~(d) violation of an order of protection, as defined in 45-5-626; or

~~(d)~~(e) violation of a no contact order, as defined in 45-5-209.

(2) A peace officer may:

(a) accept bail on behalf of a judge:

(i) in accordance with the bail schedule established under subsection (1); or

(ii) whenever the warrant of arrest specifies the amount of bail; or

(b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

(4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of the driving permit for a period of up to 6 months from the defendant's initial appearance date.

(5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a $25 administrative fee has been paid to the court."

Section 12. Section 46-16-226, MCA, is amended to read:

"46-16-226. Definitions. As used in 46-16-226 through 46-16-229, the following definitions apply:

(1) "Child witness" means an individual who is:

(a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense; or

(b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as defined in 53-20-102.

(2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

(3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, [section 1], 45-5-302, 45-5-303, 45-5-401, 45-6-103, or 45-9-132."

Section 13. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,

if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) [section 1], strangulation of a partner or family member;

~~(iii)~~(iv) 45-5-302, kidnapping;

~~(iv)~~(v) 45-5-401, robbery; or

~~(v)~~(vi) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 14. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of

age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, [section 1], 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Section 15. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

Section 16. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

SB 0153, originated in the Senate.

President of the Senate

Signed this _____ day

of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day

of _____, 2017.

SENATE BILL NO. 153

INTRODUCED BY M. MACDONALD

AN ACT CREATING THE OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER; AMENDING SECTIONS 40-15-102, 40-4-219, 41-3-301, 44-4-311, 45-5-206, 45-5-209, 46-1-502, 46-6-311, 46-9-108, 46-9-302, 46-16-226, 46-18-219, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2019 Biennium

Bill #	SB0153	**Title:**	Revise laws on strangulation of a partner or family member
Primary Sponsor:	MacDonald, Margaret (Margie)	**Status:**	As Introduced

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2018 Difference	FY 2019 Difference	FY 2020 Difference	FY 2021 Difference
Expenditures:				
General Fund	- - - - - - - - - - Unable to Determine - - - - - - - - - -			
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:				

Description of fiscal impact: This bill would create the offense of strangulation of a partner or family member. This bill would have an unknown fiscal impact on the Department of Corrections (DOC) and the Office of the Public Defender (OPD) due to the creation of a new offense and the addition of a mandatory minimum sentence.

FISCAL ANALYSIS

Assumptions:

Department of Corrections

1. This bill would have an unknown fiscal impact on the Department of Corrections (DOC) due to the creation of a new offense and the addition of a mandatory minimum sentence.
2. If a person is convicted of a felony under this new language, the cost of incarceration is $42,647 per year per male inmate and $42,063 per year per female inmate. The number of individuals incarcerated under this law cannot be predicted.
3. The amendment to add Section 36 to the Montana Constitution, known as Marsy's Law, substantially expands the definition of a victim and requires that victims be notified of and have the option to be present at all proceedings that involve preparing an offender for actual or potential release or alternative placement. The Department of Corrections therefore anticipates that the implementation of Marsy's Law will increase the cost of any bill that could involve victim notification.

Office of the State Public Defender

4. If passed, this bill will likely result in added costs for OPD because it creates a new felony offense which will require expenditure of funds for additional investigation, legal work and ultimately more trials.
5. The number of individuals who may be charged under this law cannot be predicted, therefore OPD is unable to quantify the fiscal impact.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

SENATE BILL NO. 153

INTRODUCED BY M. MACDONALD

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER; AMENDING SECTIONS 40-15-102, 40-4-219, 41-3-301, 44-4-311, 45-5-206, 45-5-209, 46-1-502, 46-6-311, 46-9-108, 46-9-302, 46-16-226, 46-18-219, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Strangulation of a partner or family member.** (1) A person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by:

(a) applying pressure on the throat or neck of the partner or family member; or

(b) blocking air flow to the nose and mouth of the partner or family member.

(2) A person convicted of strangulation of a partner or family member shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined an amount not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) A person convicted of strangulation of a partner or family member is required to pay for and complete a counseling assessment as required in 45-5-206(4).

(4) For the purposes of this section, "partner" and "family member" have the meanings provided in 45-5-206.

Section 2. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) strangulation of a partner or family member as defined in [section 1];

~~(ix)~~(x) unlawful restraint as defined in 45-5-301;

~~(x)~~(xi) kidnapping as defined in 45-5-302;

~~(xi)~~(xii) aggravated kidnapping as defined in 45-5-303; or

~~(xii)~~(xiii) arson as defined in 45-6-103.

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive

incident and the petitioner's application for an order of protection is irrelevant."

Section 3. Section 40-4-219, MCA, is amended to read:

"40-4-219. Amendment of parenting plan -- mediation. (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently:

(i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent; or

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent ~~pursuant to 40-4-221~~.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625; and

(xi) strangulation of a partner or family member, as described in [section 1].

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service

in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

Section 4. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in [section 1], against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that

the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2017--sec. 7, Ch. 376, L. 2015.)"

Section 5. Section 44-4-311, MCA, is amended to read:

"44-4-311. Domestic violence intervention program. (1) The Montana board of crime control shall use the money in the domestic violence intervention account established by 44-4-310 to fund a domestic violence intervention program to provide grants to communities for misdemeanor probation officers or compliance officers to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family member assault under 45-5-206, the offense of strangulation of a partner or family member under [section 1], or of a violation of an order of protection under 45-5-626.

(2) In administering the domestic violence intervention program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement 44-4-310 through 44-4-313."

Section 6. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family member assault -- penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) For the purpose of determining the number of convictions under this section, a conviction means:

(i) a conviction, as defined in 45-2-101, under this section;

(ii) a conviction for domestic abuse under this section;

(iii) a conviction for a violation of a statute similar to this section in another state;

(iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under 45-5-202 or assault with a weapon under 45-5-213;

(v) a conviction for strangulation of a partner or family member under [section 1];

~~(v)~~(vi) a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in this section, regardless of what the offense is named or whether it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202, 45-5-213, or this section; or

~~(vi)~~(vii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the

offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

Section 7. Section 45-5-209, MCA, is amended to read:

"45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with or arrested for an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 or, if the victim is a partner or family member of the defendant, violations of 45-5-202, ~~or~~ 45-5-213, or [section 1] at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact

order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of a no contact order.

(c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."

Section 8. Section 46-1-502, MCA, is amended to read:

"46-1-502. Mediation. (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

(a) deliberate homicide, as described in 45-5-102;

(b) mitigated deliberate homicide, as described in 45-5-103;

(c) intimidation, as described in 45-5-203;

(d) partner or family member assault, as described in 45-5-206;

(e) assault on a minor, as described in 45-5-212;

(f) strangulation of a partner or family member, as described in [section 1];

~~(f)~~(g) stalking, as described in 45-5-220;

~~(g)~~(h) aggravated kidnapping, as described in 45-5-303;

~~(h)~~(i) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, or 45-5-507;

~~(i)~~(j) endangering the welfare of children, as described in 45-5-622;

~~(j)~~(k) sexual abuse of children, as described in 45-5-625; or

~~(k)~~(l) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations."

Section 9. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.

(3) If a judge has issued a standing order as provided in 45-5-209, a peace officer shall give a defendant charged with or arrested for partner or family member assault or a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] if the victim is a partner or family member of the defendant, both written and verbal notice of the no contact order issued pursuant to 45-5-209. The notice must include specific conditions as ordered by the court."

Section 10. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation of a partner or family member the restrictions contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

(k) the defendant shall furnish bail in accordance with 46-9-401; or

(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, [section 1], 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 11. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

(b) strangulation of a partner or family member, as defined in [section 1];

~~(b)~~(c) stalking, as defined in 45-5-220;

~~(c)~~(d) violation of an order of protection, as defined in 45-5-626; or

~~(d)~~(e) violation of a no contact order, as defined in 45-5-209.

(2) A peace officer may:

(a) accept bail on behalf of a judge:

(i) in accordance with the bail schedule established under subsection (1); or

(ii) whenever the warrant of arrest specifies the amount of bail; or

(b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

(4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of the driving permit for a period of up to 6 months from the defendant's initial appearance date.

(5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a $25 administrative fee has been paid to the court."

Section 12. Section 46-16-226, MCA, is amended to read:

"46-16-226. Definitions. As used in 46-16-226 through 46-16-229, the following definitions apply:

(1) "Child witness" means an individual who is:

(a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense; or

(b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as defined in 53-20-102.

(2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

(3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, [section 1], 45-5-302, 45-5-303, 45-5-401, 45-6-103, or 45-9-132."

Section 13. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3),

if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) [section 1], strangulation of a partner or family member;

~~(iii)~~(iv) 45-5-302, kidnapping;

~~(iv)~~(v) 45-5-401, robbery; or

~~(v)~~(vi) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section

do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 14. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to

conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, [section 1], 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

NEW SECTION. **Section 15. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 153

INTRODUCED BY M. MACDONALD

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER; AMENDING SECTIONS 40-15-102, 40-4-219, 41-3-301, 44-4-311, 45-5-206, 45-5-209, 46-1-502, 46-6-311, 46-9-108, 46-9-302, 46-16-226, 46-18-219, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Strangulation of a partner or family member.** (1) A person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by:

(a) applying pressure on the throat or neck of the partner or family member; or

(b) blocking air flow to the nose and mouth of the partner or family member.

(2) (A) A PERSON CONVICTED OF A FIRST OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER SHALL BE FINED AN AMOUNT NOT TO EXCEED $50,000 OR BE IMPRISONED IN THE STATE PRISON FOR A TERM NOT TO EXCEED 5 YEARS, OR BOTH.

(B) A person convicted of ~~strangulation of a partner or family member~~ A SECOND OR SUBSEQUENT OFFENSE UNDER THIS SECTION shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined an amount not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) A person convicted of strangulation of a partner or family member is required to pay for and complete a counseling assessment as required in 45-5-206(4).

(4) For the purposes of this section, "partner" and "family member" have the meanings provided in 45-5-206.

Section 2. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family

member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) strangulation of a partner or family member as defined in [section 1];

~~(ix)~~(x) unlawful restraint as defined in 45-5-301;

~~(x)~~(xi) kidnapping as defined in 45-5-302;

~~(xi)~~(xii) aggravated kidnapping as defined in 45-5-303; or

~~(xii)~~(xiii) arson as defined in 45-6-103.

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Section 3. Section 40-4-219, MCA, is amended to read:

"40-4-219. Amendment of parenting plan -- mediation. (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently:

(i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent; or

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent ~~pursuant to 40-4-221~~.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial

decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625; and

(xi) strangulation of a partner or family member, as described in [section 1].

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting

plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

Section 4. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in [section 1], against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family

member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2017--sec. 7, Ch. 376, L. 2015.)"

Section 5. Section 44-4-311, MCA, is amended to read:

"44-4-311. Domestic violence intervention program. (1) The Montana board of crime control shall use the money in the domestic violence intervention account established by 44-4-310 to fund a domestic violence intervention program to provide grants to communities for misdemeanor probation officers or compliance officers to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family member assault under 45-5-206, the offense of strangulation of a partner or family member under [section 1], or of a violation of an order of protection under 45-5-626.

(2) In administering the domestic violence intervention program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement 44-4-310 through 44-4-313."

Section 6. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family member assault -- penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless

of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) For the purpose of determining the number of convictions under this section, a conviction means:

(i) a conviction, as defined in 45-2-101, under this section;

(ii) a conviction for domestic abuse under this section;

(iii) a conviction for a violation of a statute similar to this section in another state;

(iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under 45-5-202 or assault with a weapon under 45-5-213;

(v) a conviction for strangulation of a partner or family member under [section 1];

~~(v)~~(vi) a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in this section, regardless of what the offense is named or whether it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202, 45-5-213, or this section; or

~~(vi)~~(vii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a

counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of

sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

Section 7. Section 45-5-209, MCA, is amended to read:

"45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with or arrested for an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 or, if the victim is a partner or family member of the defendant, violations of 45-5-202, ~~or~~ 45-5-213, or [section 1] at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of a no contact order.

(c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."

Section 8. Section 46-1-502, MCA, is amended to read:

"46-1-502. Mediation. (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

(a) deliberate homicide, as described in 45-5-102;

(b) mitigated deliberate homicide, as described in 45-5-103;

(c) intimidation, as described in 45-5-203;

(d) partner or family member assault, as described in 45-5-206;

(e) assault on a minor, as described in 45-5-212;

(f) strangulation of a partner or family member, as described in [section 1];

~~(f)~~(g) stalking, as described in 45-5-220;

~~(g)~~(h) aggravated kidnapping, as described in 45-5-303;

~~(h)~~(i) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, or 45-5-507;

~~(i)~~(j) endangering the welfare of children, as described in 45-5-622;

~~(j)~~(k) sexual abuse of children, as described in 45-5-625; or

~~(k)~~(l) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations."

Section 9. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.

(3) If a judge has issued a standing order as provided in 45-5-209, a peace officer shall give a defendant charged with or arrested for partner or family member assault or a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] if the victim is a partner or family member of the defendant, both written and verbal notice of the no contact order issued pursuant to 45-5-209. The notice must include specific conditions as ordered by the court."

Section 10. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation of a partner or family member the restrictions contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

(k) the defendant shall furnish bail in accordance with 46-9-401; or

(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, [section 1], 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 11. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

(b) strangulation of a partner or family member, as defined in [section 1];

~~(b)~~(c) stalking, as defined in 45-5-220;

~~(c)~~(d) violation of an order of protection, as defined in 45-5-626; or

~~(d)~~(e) violation of a no contact order, as defined in 45-5-209.

(2) A peace officer may:

(a) accept bail on behalf of a judge:

(i) in accordance with the bail schedule established under subsection (1); or

(ii) whenever the warrant of arrest specifies the amount of bail; or

(b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

(4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of the driving permit for a period of up to 6 months from the defendant's initial appearance date.

(5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a $25 administrative fee has been paid to the court."

Section 12. Section 46-16-226, MCA, is amended to read:

"46-16-226. Definitions. As used in 46-16-226 through 46-16-229, the following definitions apply:

(1) "Child witness" means an individual who is:

(a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense; or

(b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as defined in 53-20-102.

(2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

(3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, [section 1], 45-5-302, 45-5-303, 45-5-401, 45-6-103, or 45-9-132."

Section 13. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) [section 1], strangulation of a partner or family member;

~~(iii)~~(iv) 45-5-302, kidnapping;

~~(iv)~~(v) 45-5-401, robbery; or

~~(v)~~(vi) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 14. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment

building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,

45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, [section 1], 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

NEW SECTION. **Section 15. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

- END -

AN ACT CREATING THE OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER; AMENDING SECTIONS 40-15-102, 40-4-219, 41-3-301, 44-4-311, 45-5-206, 45-5-209, 46-1-502, 46-6-311, 46-9-108, 46-9-302, 46-16-226, 46-18-219, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Strangulation of a partner or family member. (1) A person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by:

(a) applying pressure on the throat or neck of the partner or family member; or

(b) blocking air flow to the nose and mouth of the partner or family member.

(2) (a) A person convicted of a first offense of strangulation of a partner or family member shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(b) A person convicted of a second or subsequent offense under this section shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined an amount not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) A person convicted of strangulation of a partner or family member is required to pay for and complete a counseling assessment as required in 45-5-206(4).

(4) For the purposes of this section, "partner" and "family member" have the meanings provided in 45-5-206.

Section 2. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family

member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) strangulation of a partner or family member as defined in [section 1];

~~(ix)~~(x) unlawful restraint as defined in 45-5-301;

~~(x)~~(xi) kidnapping as defined in 45-5-302;

~~(xi)~~(xii) aggravated kidnapping as defined in 45-5-303; or

~~(xii)~~(xiii) arson as defined in 45-6-103.

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Section 3. Section 40-4-219, MCA, is amended to read:

"40-4-219. Amendment of parenting plan -- mediation. (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently:

(i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent; or

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent ~~pursuant to~~

~~40-4-221~~.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625; and

(xi) strangulation of a partner or family member, as described in [section 1].

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting

plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

Section 4. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in [section 1], against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult

member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must

be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2017--sec. 7, Ch. 376, L. 2015.)"

Section 5. Section 44-4-311, MCA, is amended to read:

"44-4-311. Domestic violence intervention program. (1) The Montana board of crime control shall use the money in the domestic violence intervention account established by 44-4-310 to fund a domestic violence intervention program to provide grants to communities for misdemeanor probation officers or compliance officers to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family member assault under 45-5-206, the offense of strangulation of a partner or family member under [section 1], or of a violation of an order of protection under 45-5-626.

(2) In administering the domestic violence intervention program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement 44-4-310 through 44-4-313."

Section 6. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family member assault -- penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family

member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) For the purpose of determining the number of convictions under this section, a conviction means:

(i) a conviction, as defined in 45-2-101, under this section;

(ii) a conviction for domestic abuse under this section;

(iii) a conviction for a violation of a statute similar to this section in another state;

(iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under 45-5-202 or assault with a weapon under 45-5-213;

(v) a conviction for strangulation of a partner or family member under [section 1];

~~(v)~~(vi) a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in this section, regardless of what the offense is named or whether it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202, 45-5-213, or this section; or

~~(vi)~~(vii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

Section 7. Section 45-5-209, MCA, is amended to read:

"45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with or arrested for an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 or, if the victim is a partner or family member of the defendant, violations of 45-5-202, ~~or~~ 45-5-213, or [section 1] at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of a no contact order.

(c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(9) As used in this section, the following definitions apply:

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."

Section 8. Section 46-1-502, MCA, is amended to read:

"46-1-502. Mediation. (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

(a) deliberate homicide, as described in 45-5-102;

(b) mitigated deliberate homicide, as described in 45-5-103;

(c) intimidation, as described in 45-5-203;

(d) partner or family member assault, as described in 45-5-206;

(e) assault on a minor, as described in 45-5-212;

(f) strangulation of a partner or family member, as described in [section 1];

~~(f)~~(g) stalking, as described in 45-5-220;

~~(g)~~(h) aggravated kidnapping, as described in 45-5-303;

~~(h)~~(i) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, or 45-5-507;

~~(i)~~(j) endangering the welfare of children, as described in 45-5-622;

~~(j)~~(k) sexual abuse of children, as described in 45-5-625; or

~~(k)~~(l) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations."

Section 9. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining

order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.

(3) If a judge has issued a standing order as provided in 45-5-209, a peace officer shall give a defendant charged with or arrested for partner or family member assault or a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] if the victim is a partner or family member of the defendant, both written and verbal notice of the no contact order issued pursuant to 45-5-209. The notice must include specific conditions as ordered by the court."

Section 10. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation of a partner or family member the restrictions contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

(k) the defendant shall furnish bail in accordance with 46-9-401; or

(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, [section 1], 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 11. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a

schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

(b) strangulation of a partner or family member, as defined in [section 1];

~~(b)~~(c) stalking, as defined in 45-5-220;

~~(c)~~(d) violation of an order of protection, as defined in 45-5-626; or

~~(d)~~(e) violation of a no contact order, as defined in 45-5-209.

(2) A peace officer may:

(a) accept bail on behalf of a judge:

(i) in accordance with the bail schedule established under subsection (1); or

(ii) whenever the warrant of arrest specifies the amount of bail; or

(b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

(4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of the driving permit for a period of up to 6 months from the defendant's initial appearance date.

(5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a $25 administrative fee has been paid to the court."

Section 12. Section 46-16-226, MCA, is amended to read:

"46-16-226. Definitions. As used in 46-16-226 through 46-16-229, the following definitions apply:

(1) "Child witness" means an individual who is:

(a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense; or

(b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as defined in 53-20-102.

(2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

(3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, [section 1], 45-5-302, 45-5-303, 45-5-401, 45-6-103, or 45-9-132."

Section 13. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,

if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) [section 1], strangulation of a partner or family member;

~~(iii)~~(iv) 45-5-302, kidnapping;

~~(iv)~~(v) 45-5-401, robbery; or

~~(v)~~(vi) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 14. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of

age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, [section 1], 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Section 15. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

Section 16. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

SB 0153, originated in the Senate.

President of the Senate

Signed this _____ day

of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day

of _____, 2017.

SENATE BILL NO. 153

INTRODUCED BY M. MACDONALD

AN ACT CREATING THE OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER; AMENDING SECTIONS 40-15-102, 40-4-219, 41-3-301, 44-4-311, 45-5-206, 45-5-209, 46-1-502, 46-6-311, 46-9-108, 46-9-302, 46-16-226, 46-18-219, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

MINUTES

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on February 2, 2017 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Excused: Sen. Scott Sales (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 147, 1/26/2017; SB 153, 1/26/2017
Executive Action:	SR 19-Be Adopted, SB 144-Do Pass As Amended, HB 184-Motions Withdrawn

HEARING ON SB 147

Opening Statement by Sponsor:

00:00:59 Sen. Diane Sands (D), SD 49, opened the hearing on SB 147, Revise clean indoor air act laws to prohibit use of vapor products.

Proponents' Testimony:

00:02:24 Greg Holzman, physician, state medical officer, Department of Public Health and Human Services (DPHHS)
00:07:00 Kristin Page-Nei, American Cancer Society/Cancer Action Network (ACS)
EXHIBIT(jus24a01)

00:12:25 Amanda Cahill, American Heart Association
00:14:46 Bob Vogel, Montana School Boards Association; Montana School Administrators Association
00:15:52 Kris Minard, self, tobacco use prevention specialist, Office of Public Instruction (OPI)
00:18:16 Jean Branscum, CEO, Montana Medical Association
00:19:54 Jim Ahrens, Association of Montana Public Health Officials (AMPHO); also for Montana Public Health Association; Montana Environmental Health Association; American Cancer Society/Cancer Action Network; Montana Dental Association; also for Cindy Farr, Missoula
EXHIBIT(jus24a02)
EXHIBIT(jus24a03)

Opponents' Testimony:

00:24:03 Ron Marshall, Freedom Vapes, Bozeman
EXHIBIT(jus24a04)
EXHIBIT(jus24a05)

00:38:24 Daniel Fuchs, Triangle Public Affairs
EXHIBIT(jus24a06)

00:40:46 Cody Rea, self, Freedom Vapes, Bozeman
00:44:53 Keith Bowman, self, general manager, E Cig Vapor Juice Store
EXHIBIT(jus24a07)
EXHIBIT(jus24a08)
EXHIBIT(jus24a09)
EXHIBIT(jus24a10)
EXHIBIT(jus24a11)
EXHIBIT(jus24a12)
EXHIBIT(jus24a13)
EXHIBIT(jus24a14)
EXHIBIT(jus24a15)

00:52:04 Deanna Marshall, owner, Freedom Vapes (FV), Bozeman
EXHIBIT(jus24a16)

01:11:08 Ronnie Fredrick, self, Sammi's Smoke Shop
01:17:59 Alex Davis, manager, Freedom Vapes, Bozeman
01:20:31 Ron Melgren, self, Freedom Vapes, Bozeman

Informational Testimony:

01:22:08 Kate Cholewa, Montana Cannabis Association (MCA)

Questions from Committee Members and Responses:

01:23:14 Sen. Hinkle
01:24:16 Ms. Cholewa, MCA
01:26:28 Sen. Hinkle
01:26:44 Ms. Page-Nei, ACS
01:27:34 Sen. Hinkle
01:27:40 Mr. Holzman, DPHHS
01:29:03 Sen. Gross
01:29:26 Mr. Holzman
01:32:11 Sen. Gross
01:32:34 Ms. Minard, OPI
01:33:15 Sen. Fielder
01:33:25 Ms. Minard
01:35:40 Sen. Fielder
01:37:01 Mr. Holzman
01:38:50 Sen. Fielder
01:39:41 Mr. Ahrens, AMPHO
01:40:45 Sen. Hinkle
01:41:25 Ms. Marshall, FV
01:41:57 Sen. Hinkle
01:42:24 Sen. Sands
01:42:55 Sen. Vincent

Closing by Sponsor:

01:44:48 Sen. Sands

HEARING ON SB 153

Opening Statement by Sponsor:

01:49:27 Sen. Margaret (Margie) MacDonald (D), SD 26, opened the hearing on SB 153, Revise laws on strangulation of a partner or family member.

Proponents' Testimony:

01:52:22 Ole Olson, prosecutor, assistant attorney general, Department of Justice (DOJ), also for Julie Pierce, Yellowstone County attorney, Billings
EXHIBIT(jus24a17)
EXHIBIT(jus24a18)

01:58:22 Jeff Sealey, self, deputy county attorney, Lewis and Clark County (L&CCO), Helena
EXHIBIT(jus24a19)

02:05:01 Melinda Reed, self, director, Friendship Center
02:07:19 Robin Turner, Montana Coalition Against Domestic and Sexual Violence
EXHIBIT(jus24a20)
EXHIBIT(jus24a21)
EXHIBIT(jus24a22)

02:12:26 Mark Murphy, Montana County Attorneys Association; Montana Association of Chiefs of Police; Montana Police Protective Association

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

02:16:11 Sen. Fielder
02:16:30 Mr. Olson, DOJ
02:19:09 Chairman Regier
02:19:19 Mr. Olson
02:20:27 Sen. Vincent
02:21:43 Mr. Olson
02:25:21 Sen. Swandal
02:25:45 Mr. Sealey, L&CCO
02:27:21 Sen. Hinkle
02:28:23 Mr. Olson

Closing by Sponsor:

02:29:27 Sen. MacDonald

02:32:27 Brief Recess
02:37:57 Reconvene

EXECUTIVE ACTION ON SR 19

02:38:33 **Motion:** Sen. Fielder moved that **SR 19 BE ADOPTED**.

Discussion:

02:38:49 Sen. Swandal
02:38:56 Chairman Regier
02:39:02 Sen. Fielder
02:39:41 Chairman Regier

02:39:57 **Vote:** Motion carried unanimously by voice vote. Sen. S. Sales voted by proxy.

EXECUTIVE ACTION ON SB 144

02:40:29 **Motion:** Sen. Fielder moved that **SB 44 DO PASS**.

Discussion:

02:41:26 Chairman Regier
02:41:43 Julianne Burkhardt, Legislative Services Division (LSD)

02:42:46 **Motion/Vote:** Sen. K. Regier moved that **SB 144 BE AMENDED**. Motion carried unanimously by voice vote. Sen. S. Sales voted by proxy.
EXHIBIT(jus24a23)

02:43:19 **Motion:** Sen. Fielder moved that **SB 144 DO PASS AS AMENDED**.

Discussion:

02:43:26 Sen. Sands
02:44:16 Chairman Regier
02:44:24 Sen. Fielder
02:45:17 Sen. Swandal
02:45:58 Sen. Gross
02:46:15 Ms. Burkhardt, LSD
02:46:26 Sen. MacDonald
02:47:09 Sen. Vincent
02:48:02 Chairman Regier
02:48:23 Sen. Gross

Sen. Sands absent from hearing room.

02:48:51 **Vote:** Motion carried 7-3 by roll call vote with Sen. Gross, Sen. MacDonald and Sen. Sands voting no. Sen. S. Sales and Sen. Sands voted by proxy.

EXECUTIVE ACTION ON HB 184

02:49:46 **Motion:** Sen. Fielder moved that **HB 144 BE CONCURRED IN**.

02:50:15 **Motion:** Sen. Swandal moved that **HB 144 BE AMENDED**.
EXHIBIT(jus24a24)

Discussion:

02:50:59 Sen. Fielder
02:51:27 Sen. Swandal
02:52:54 Chairman Regier
02:53:20 Sen. MacDonald
02:53:45 Chairman Regier
02:53:53 Sen. Fielder
02:54:51 Chairman Regier
02:54:59 Sen. Vincent
02:55:20 Sen. Swandal
02:55:29 Sen. Vincent

02:55:33 Without objection, Sen. Swandal withdrew the BE AMENDED motion.

02:55:41 Without objection, Sen. Fielder withdrew the Be CONCURRED IN motion.

ADJOURNMENT

Adjournment: 11:58 A.M.

_____
Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT(jus24aad.pdf)

SENATE JUDICIARY
Exhibit No. 17
Date: 2/2/17
Bill No. SB 153

TESTIMONY OF PATTY WALTERS - SB 153
FEBRUARY 2, 2017

My name is Patty Walters. I never dreamed that the man I had just met would change my life FOREVER, both physically and mentally. I took a lot of beatings from him. Over our ten year relationship, the last was the worst by far. I looked up to see him running at me I was lying on the bed. He grabbed my ankles and pulled me to the floor. He told me this was it; he had dug my grave and told me no one would ever find me. This took place in Victor, Montana.

While saying these words he had straddled me and began strangling me. The strength in his hands around my throat was horrifying. I was begging him to stop; I was calling for help. Then, I realized I was making no sound at all. My ears started ringing; the room started to shrink. I thought of my family and I was sorry they would find me dead. Then, things changed. I stopped praying he would stop. I started praying for it to be over. The pain and fear was more than I could take anymore. The horror of it all was too much to bear. This brutal, brutal man was killing me and that was it.

If this crime had been a felony at the time he strangled Debra Ricci in Missoula, he wouldn't have moved to my town and found me. My life has not been the same since, and it never will be.

Please vote yes to make strangulation a felony in Montana, as it is in 44 other states. You have the power to save lives. Please vote yes on SB 153.

Sincerely,

Patty Walters

Stevensville

SB-153

TESTIMONY OF DEBRA RICCI REGARDING STRANGULATION BILL

FEBRUARY 2, 2017

SENATE JUDICIARY
Exhibit No. 18
Date: 2/2/17
Bill No. SB 153

"As a child I never imagined that all of the real monsters would be humans." – Mobeen Hakeem

The woman gazing at me looked haunted. One of her blue eyes was swollen shut, painful purple and black bruises in stark contrast to her pale complexion. Her jaw was bruised, her lip swollen and cut. But most disturbing were the purple marks around her neck, in the shape of a large man's hands and fingers. I reached up with a shaking hand and swept a strand of hair off my forehead, then slowly turned away from the mirror on the wall.

Three days before, Terry Flowers had brutally beaten and strangled me in my home in Missoula, Montana. It was the third time he had been arrested for the same violent crime against me. Each time he was charged with a misdemeanor, and set free. I had a restraining order against him, but it did no good. I had called the jail, and they had ensured me they would call to warn me when he was being released. I thought I had at least another day to try and recover.

My phone rang. It was a friend, calling to see if I was okay. I walked into my bedroom and sat on my bed, talking to my friend. After I hung up, I sat the phone next to me on the bed and leaned back against the pillows. And then I heard my front door open.

Terry Flowers came running into my bedroom, furious at me for telling the police what he had done. Furious that he had been jailed again. He reared his head back, and slammed his forehead against mine. The blow threw me against the headboard of the bed and nearly knocked me unconscious. Before I could even think about escape, he was on top of me, his fingers wrapped around my neck, choking me. Just before I lost consciousness, he lifted a pillow off my bed, and I realized he was going to smother me.

I turned my head to the left, thinking that maybe I could breathe out of the side of the pillow. Before the pillow came down over my face, I saw my phone sitting on the bed, next to my left thigh.

I frantically slid the phone under my thigh. I ran my finger over the phone, found the power button, and pressed it. As I was losing consciousness, I found what I thought was the 9, and I pushed it. I traced my finger along the phone again, found the 1, and pressed it twice. He lifted the pillow off my face, and I struggled to breathe. He looked at me with calm, dead eyes, and wrapped his hands around my neck again. As I lost consciousness, I prayed that the call had gone through, but knew the police would be too late this time.

When I regained consciousness, Terry Flowers was on the floor in handcuffs, and I was surrounded by police. They had broken my door in and caught him strangling me to death. As the paramedics worked on me, and carried me to the waiting ambulance, an officer assured me that this time he would be charged with Attempted Deliberate Homicide, and would go to prison.

They were wrong. Once again, Terry Flowers was plea bargained down to a misdemeanor, and was set free. Two men, friends of mine, moved into my home, and took turns patrolling the outside of my home. Terry Flowers decided to leave me alone, and moved to Stevensville, where he found Patty Walters, and almost murdered her. I didn't know about Patty until 13 years later, when she found me on facebook and told me how he had dug a grave for her, and after strangling her unconscious, had put her body in the grave, thinking she was dead.

Terry Flowers left me with a traumatic brain injury and three crushed bones. For ten years, I underwent seizures, blackouts and surgeries. I lost my business, I lost my home, and I lost everything. Nurses had to come into the Section 8 housing I had been moved into to care for me. I have never recovered, not completely.

Terry Flowers spent one night in jail for what he did to Patty Walters, where he was once again plea bargained down to a misdemeanor for almost ending her life. He was eventually arrested for drug possession, and is now in prison for drugs. Not for almost murdering two women. For drugs.

Terry Flowers will be free someday, and Patty and I will once again be living in fear for our lives. If strangulation had been a felony 13 years ago when he almost murdered me through strangulation, Patty Walters would now be living a normal life. If strangulation continues to be a slap on the wrist in Montana, more women, children and men will die this most brutal, violent death.

You have the power to save lives. Please vote yes on SB153.

Sincerely,

Debra Ricci
519 Woodford Street
Missoula, MT 59801

SENATE JUDICIARY
Exhibit No. 19
Date: 2/2/17
Bill No. SB 153

SENATE JUDICIARY
Exhibit No. 20
2/2/17
SB 153

TRAINING INSTITUTE on STRANGULATION PREVENTION

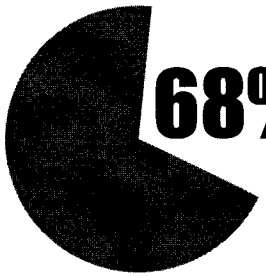
STRANGULATION IN INTIMATE PARTNER VIOLENCE

FACT SHEET

STRANGULATION: the obstruction of blood vessels and/or airflow in the neck resulting in asphyxia.

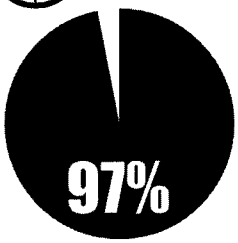
1 in 4 women will experience intimate partner violence (IPV) in their lifetime.[1]

Of women at high risk, up to...

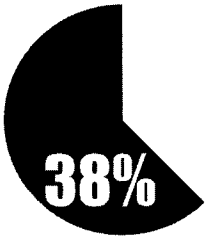


will experience near-fatal strangulation by their partner.[2]

Loss of consciousness can occurr within 5 - 10 seconds. Death within minutes.[2]

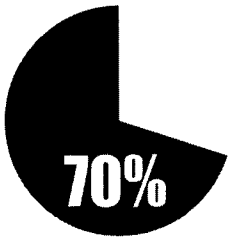


are strangled manually (with hands).[3]



report losing consciousness.[4]

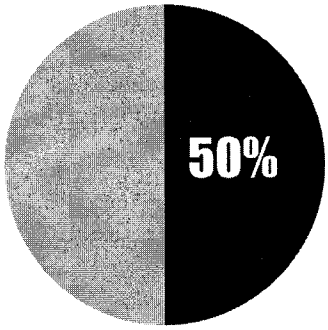
are strangled along with sexual assault/abuse.[5] **9% are also pregnant.**[4]



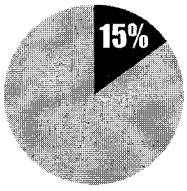
of strangled women believed they were going to die.[6]

And odds for homicide increase 750%
for victims who have been previously strangled, compared to victims who have never been strangled.[7]

HOWEVER...
Oftentimes,
even in fatal *cases*,
there are
NO EXTERNAL SIGNS
of injury.[3]



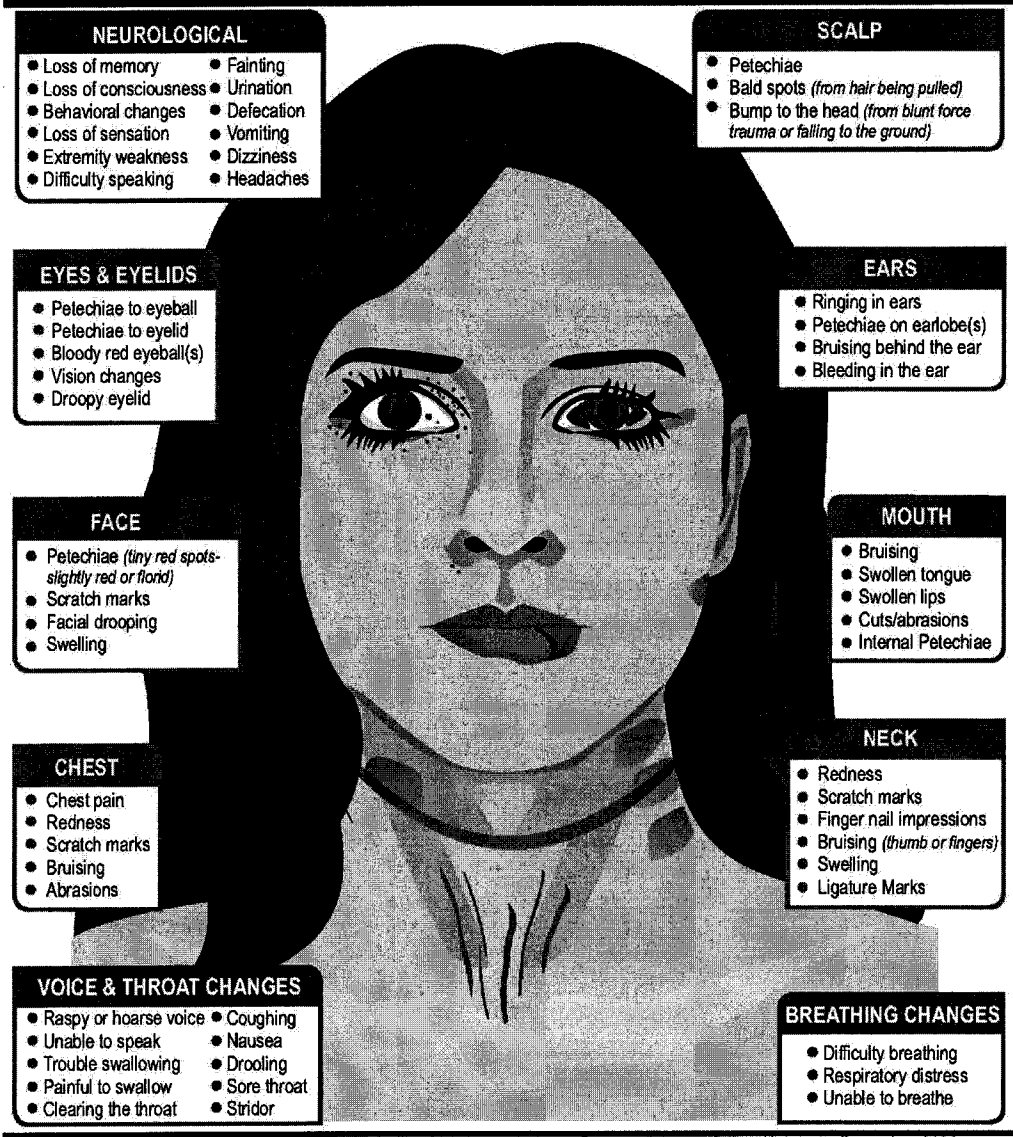
Only half of victims have visible injuries



Of these, only 15% could be photographed

STRANGULATION

SIGNS AND SYMPTOMS[2]



NEUROLOGICAL
- Loss of memory
- Loss of consciousness
- Behavioral changes
- Loss of sensation
- Extremity weakness
- Difficulty speaking
- Fainting
- Urination
- Defecation
- Vomiting
- Dizziness
- Headaches

SCALP
- Petechiae
- Bald spots *(from hair being pulled)*
- Bump to the head *(from blunt force trauma or falling to the ground)*

EYES & EYELIDS
- Petechiae to eyeball
- Petechiae to eyelid
- Bloody red eyeball(s)
- Vision changes
- Droopy eyelid

EARS
- Ringing in ears
- Petechiae on earlobe(s)
- Bruising behind the ear
- Bleeding in the ear

FACE
- Petechiae *(tiny red spots-slightly red or florid)*
- Scratch marks
- Facial drooping
- Swelling

MOUTH
- Bruising
- Swollen tongue
- Swollen lips
- Cuts/abrasions
- Internal Petechiae

CHEST
- Chest pain
- Redness
- Scratch marks
- Bruising
- Abrasions

NECK
- Redness
- Scratch marks
- Finger nail impressions
- Bruising *(thumb or fingers)*
- Swelling
- Ligature Marks

VOICE & THROAT CHANGES
- Raspy or hoarse voice
- Unable to speak
- Trouble swallowing
- Painful to swallow
- Clearing the throat
- Coughing
- Nausea
- Drooling
- Sore throat
- Stridor

BREATHING CHANGES
- Difficulty breathing
- Respiratory distress
- Unable to breathe

CONSEQUENCES[9]

PSYCHOLOGICAL INJURY

PTSD, depression, suicidal ideation, memory problems, nightmares, anxiety, severe stress reaction, amnesia, and psychosis.

DELAYED FATALITY

Death can occur days or weeks after the attack due to cartoid artery dissection and respiratory complications such as pneumonia, ARDS and the risk of blood clots traveling to the brain (embolization).

Today,
38 States
have legislation
AGAINST
STRANGULATION[8]

VAWA 2013
added strangulation
and suffocation to
FEDERAL LAW

Source: *Strangulation in Intimate Partner Violence: Clinical Signs of Potential Violence.* Oxford University Press, NY. 2009

1 Breiding MJ, Smith SG, Basile KC, Walters ML, Chen J, Merrick MT. Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner ViolenceVictimization—National Intimate Partner and Sexual Violence Survey, United States,2011. MMWR 2014; 63(SS-8): 1-18.

2 Taliaferro, E., Hawley, D., McClane, G.E. & Strack, G. (2009), Strangulation in Intimate Partner Violence. *Intimate Partner Violence: A Health-Based Perspective.* Oxford University Press, Inc., 217-235.

3 Strack, G.B., McClane, G.E., & Hawley, D. (2001). A review of 300 attempted strangulation cases: Part I: Criminal Legal Issues. Journal of Emergency Medicine, 21(3), 303-309.

4 Shields et al. (2010). Living victims of strangulation: A 10-year review of cases in a metropolitan community. American Journal of Forensic Medical Pathology, 31, 320-325.

5 Plattner, T. et al. (2005). Forensic assessment of survived strangulation. 153 Forensic Science International 202

6 Wilbur, L. et al. (2001). Survey results of women who have been strangulated while in an abusive relationship. 21J. Emergency Medicine 297.

7 Glass et al. (2008). Non-fatal strangulation is an important risk factor for homicide of women. The Journal of Emergency Medicine, 35(3), 329-335.

8 Mack, M. (2013) States with strangulation legislation. A product of the Training Institute on Strangulation Prevention. www.strangulationpreventioninstitute.com

9 Funk, M. & Schuppel, J. (2003) Strangulation injuries. Wisconsin Medical Journal, 102(3), 41-45.

TRAINING INSTITUTE on STRANGULATION PREVENTION

a program of Alliance for HOPE International

101 W. Broadway, Suite 1770,
San Diego, CA 92101
1-888-511-3522

StrangulationTrainingInstitute.com

SENATE JUDICIARY
Exhibit No. 21
Date: 2/2/17
Bill No. SB 153

MISSOULA COUNTY

RELATIONSHIP VIOLENCE SERVICES

317 Woody Street
Mailing Address: 200 West Broadway
Missoula MT 59802-4292 | (406) 258-3830 | www.co.missoula.mt.us/RVS

Crime Victim Advocate Program | JUST Response | Healthy Relationships Project

February 1, 2017

To: Senate Judiciary Committee
From: Rebecca Calabrese, Crime Victim Advocate
Re: SB 153 – An Act Creating the Offense of Strangulation of a Partner or Family Member

I appreciate the opportunity to submit written testimony in support of SB 153. I am a Crime Victim Advocate in Missoula, and I work closely with Missoula County Sheriff's Office law enforcement officers, as well as the Missoula County Attorney's Office. I strongly support SB 153 sponsored by Senator MacDonald.

I sometimes work with families of children who have been abused. At times the person abusing a child is a parent or guardian. In one case a child under the age of 10 was repeatedly strangled by her stepparent, without the non-offending parent's knowledge. The non-offending parent did not know why her daughter was having breathing problems and her skin looked gray, so she took her to the emergency room. She found out about the abuse when her daughter disclosed to her.

Strangulation is one of the most lethal forms of violence that a person can perpetrate against another—and children are especially vulnerable. Children are led to believe that abuse is normal disciplinary behavior. Adult victims of strangulation often minimize what has happened to them, or have trouble explaining what happened. For children, describing what has happened can be even harder. Prosecutors can charge Aggravated Assault when a victim says they thought they were going to die, but children may not be able to conceptualize their fear that way. Children under the age of 12 think concretely, and might not be able to verbalize their fear in the context of life and death or serious injury.

Assault on a Minor—or Partner or Family Member Assault for an adult victim— is not an adequate charge when the effects of strangulation are so dire. Children who experience strangulation will have to worry about increased risk of stroke for the rest of their lives. Furthermore, while medical personnel might not be able to see physical marks, the impacts become visible in the form of behavioral changes resulting from childhood trauma. Young people who experience repeated violence face more difficulties than their peers. Difficulties include mental health problems and behavioral problems, as well as further victimization.

Enacting a bill to create a felony strangulation statute will go a long way in creating this positive change for victims. Thank you for your time and attention to this important issue. I strongly urge you to vote **YES on SB 153.**

Sincerely,

Rebecca Calabrese
Crime Victim Advocate
(406) 273-8425 | rcalabrese@missoulacounty.us

MISSOULA CITY-COUNTY RELATIONSHIP VIOLENCE SERVICES

Ending relationship violence. Creating solutions for a healthy community.

MISSOULA COUNTY

RELATIONSHIP VIOLENCE SERVICES
317 Woody Street
Mailing Address: 200 West Broadway
Missoula MT 59802-4292 | (406) 258-3830 | www.co.missoula.mt.us/RVS

Hearing 2/2/17

MISSOULA

SENATE JUDICIARY
Exhibit No. 22
Date 2/2/17
Bill No. SB153

Crime Victim Advocate Program | JUST Response | Healthy Relationships Project

January 26, 2017

To: Senate Judiciary Committee
From: Missoula City-County Relationship Violence Services
Re: SB 153 – An Act Creating the Offense of Strangulation of a Partner or Family Member

Missoula City-County Relationship Violence Services appreciates the opportunity to submit written testimony in support of SB 153.

Relationship Violence Services —established in 1985 as the Crime Victim Advocate Program —is one of the oldest legal advocacy programs in Montana. Our program provides free and confidential assistance to victims of relationship violence, sexual assault, stalking, and other violent crimes. Our program offers victim advocacy, crisis counseling, and support; provides information and referrals to community-based services; and, upholds victims' rights within the criminal justice system. We strongly support SB 153 sponsored by Senator MacDonald.

The perpetration of strangulation is a common tactic of abusive partners to terrorize and control victims. The act of strangulation symbolizes an abuser's power and control over the victim. More importantly, the extremely violent nature of strangulation in domestic violence can serve as two important warnings. First, strangulation may indicate an ongoing pattern of abuse in the relationship. Reports have indicated that 40-percent of domestic violence victims described being strangled as part of abusive conduct at least once in their relationship.[1] Second, it can foreshadow escalating violence within the already abusive relationship. Strangulation is typically one of the last abusive acts committed by a violent domestic violence partner before actual murder. When an abuser decides to put his hands around the victim's neck and squeeze, he has indicated intent to cause great physical harm, if not death. At the Missoula City-County Crime Victim Advocate Program, advocates help between 20 – 30 victims of reported strangulation each year.

Strangulation is one of the most lethal forms of violence that a person can perpetrate against another. When strangulation occurs within the context of a domestic violence relationship, *"the odds of becoming an attempted homicide increased by about seven-fold for women who had been strangled by their partner* (*Journal of Emergency Medicine*, 2008). Furthermore, the authors state, *these findings indicate that strangulation is a relatively prevalent form of violence toward women who experience physical violence in an abusive relationship and is a significant predictor for future lethal violence.* In other words, the longer a woman is in an abusive relationship where she is strangled, the greater the likelihood the frequency of the strangulation will increase and the greater the likelihood she will die.

Holding offenders of strangulation in Montana has proven to be a challenge however. A victim may minimize their experience, simply reporting that the abuser grabbed or squeezed their throat, or refer to the attack as being

[1] Resource Materials on Strangulation, New York Correction History Society, http://www.correctionhistory.org/northcountry/html/knowlaw/strangulation3.htm (last visited on November 30, 2011) (providing material used at the New York Prosecutors Training Institute).

"choked". Complicating this, although serious injuries may result from being strangled and strangulation is often an indication of an ongoing pattern of abuse or a foreshadowing of escalating violence, the victim often does not have visible injuries. Yet, over the following 24 to 36 hours many victims of strangulation experience loss of memory, change in voice, swallowing difficulties, inability to sleep, blurred vision, headaches, and hearing loss. Months and years after a strangulation attack, a victim may also increase a person's risk of stroke and/or dementia. Therefore, despite the frightening description of events and the risk of permanent injury or even death, the victim may not receive medical attention, the act of strangulation is not included in police reports, strangulation is not charged by law enforcement as a crime and it is not prosecuted in court. In essence, strangulation, a lethal form of assault, is minimized or disregarded entirely, making it an even more life-threatening crime. Even when a case is reported, and investigated, if a victim does not specifically say that they thought that they thought that they were going to die, a felony aggravated assault charge cannot be brought against the offender. If charged at all, these strangulation cases can only be charged as a misdemeanor because Montana lacks the prosecution tools to hold offenders accountable. The enacting a bill to create a felony strangulation statute will go a long way in creating this positive change for victims of domestic violence and their children.

Thank you for your time and attention to this important issue. I strongly urge you to vote **YES on SB 153**. I am available to provide further information if you have any questions.

Sincerely,

Shantelle Gaynor
Department Manager
Relationship Violence Services
(406) 258-4650 | sgaynor@missoulacounty.us

Montana State Legislature

2017 Session

Additional Documents include:

***Business Report**
***Roll Call(attendance)**
***Standing Committee Reports,**
***Table Bills, Fiscal reports etc.**
***Roll Call Votes**
***Witness Statements**
***Informational items**
***Visitor Registrations**
***Any other Documents;**
~Petitions if any?
~Any and all material handed in after the meeting end.

Montana Historical Society Archives
225 N. Roberts
Helena MT 59620-1201
2017 Legislative Scanner Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Thursday, February 2, 2017 **Time:** 9:00 AM
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

SB 147 - Revise clean indoor air act laws to prohibit use of vapor products - Sen. Diane Sands
SB 153 - Revise laws on strangulation of a partner or family member - Sen. Margaret (Margie) MacDonald

EXECUTIVE ACTION TAKEN:

SR 19-Be Adopted
SB 144-Do Pass As Amended

HB 184-Be Concurred In, Be Amended-Both Motions Withdrawn

Comments:

Keith Regier

SEN. Keith Regier, Chair

MONTANA STATE SENATE

2017 JUDICIARY COMMITTEE

ROLL CALL

DATE: 2/2/17

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR KEITH REGIER		
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		
VICE CHAIRMAN, SENATOR DIANE SANDS		
SENATOR STEVE HINEBAUCH		
SENATOR JEDEDIAH HINKLE		
SENATOR CHAS VINCENT		
SENATOR NELS SWANDAL		
~~**SENATOR MARY SHEEHY MOE**~~		
SENATOR MARGARET MacDONALD		
SENATOR JEN GROSS		
PRESIDENT SCOTT SALES		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Resolution 19** (first reading copy -- white) **be adopted**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 10, No 0
Fiscal Note Required __

SR0019001SC.sjc

SENATE STANDING COMMITTEE REPORT

February 2, 2017

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 144** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Keith Regier, Chair

And, that such amendments read:

1. Page 1, line 13.
Following: "if"
Insert: "any of the following is true"

2. Page 1, line 16.
Strike: "or"

- END -

Committee Vote:
Yes 7, No 3
Fiscal Note Required __

SB0144001SC.sjc

MONTANA STATE SENATE

ROLL CALL VOTE

2017 JUDICIARY COMMITTEE

DATE 2/2/17 BILL NO SB144 MOTION NO. 3

MOTION: Do Pass as Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	~		
SENATOR CHAS VINCENT	~		
SENATOR DIANE SANDS		~	~
SENATOR JEDEDIAH HINKLE	~		
SENATOR MARY SHEEHY ~~MOE~~			~
SENATOR NELS SWANDAL	~		
SENATOR MARGARET MacDONALD		~	
SENATOR JEN GROSS		~	
PRESIDENT SCOTT SALES	~		~
SENATOR STEVE HINEBAUCH	~		
CHAIRMAN, SENATOR KEITH REGIER	~		

7/3

SENATE PROXY

I, Senator DIANE SANDS hereby authorize Senator

MacDonald to vote my proxy before the Senate

JUDICIARY meeting held on 2/2, 2017.

Senator Signature (Sen. SANDS)

1-4-2017
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No

SENATE PROXY

I, Senator SCOTT SALES hereby authorize Senator

Vincent to vote my proxy before the Senate

JUDICIARY meeting held on 2/2, 2017.

Scott Sales
Senator Signature (Sen. SALES)

2/2/17
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, February 2, 2017
SB 147 - Revise clean indoor air act laws to prohibit use of vapor products
Sponsor: **Sen. Diane Sands**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
RON MARSHALL	FREEDOM VAPES LLC		✓	✓
Deanna Marshall	owner Freedom Vapes		✓	
Jasen Cornfield	owner old skool Vape Society llc		✓	
Jeremy Fiersen	old skool vape society		✓	
Theresa Marshall	Self		✓	
Alex Davis	manager Freedom Vapes llc		✓	
Robert Craraft	owner of vaporology		✓	
Keith Bowman	GM ~~[illegible]~~ Ecig Vapor Juice Store		✓	
Kris Howe	Old Skool		✓	
Greg Holzman	PPHHS	✓		
Kristin Nei	ACS&AN	✓		
Ian Johnson	Freedom Vapes LLC		✓	
Ronnie Fredrick	Sammis smoke shop		✓	
Sean Leon	Sammis vapor		✓	
Kris Minard	self	✓		
SAMANTHA LEON	SAMMI'S VAPOR		✓	
Amanda Cahill	American Heart Assoc.	✓		
Pat Judd	SAM	✓		
BOB VOGEL	MTSDA	✓		
RON MCGREEN	FREEDOM VAPES LLC		✓	
Cody Fea	Freedom Vapes LLC		✓	
David Herriman	MT Dental Assoc	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, February 2, 2017
SB 147 - Revise clean indoor air act laws to prohibit use of vapor products
Sponsor: **Sen. Diane Sands**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
E. J. Redding	Reynolds America		X	
Joan Branscum	MT Medical Assn	X		
Amee Grmoustez	Billings Chmr	X		
Dan Fuchs	Triangle Public Aff.		X	
Mike Foster	Catholic Hospitals	X		
Susie Hamilton	SELF	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, February 2, 2017
SB 153 - Revise laws on strangulation of a partner or family member
Sponsor: **Sen. Margaret (Margie) MacDonald**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Ole Olson	DOJ	✓		
Jeff Sealey	self	✓		
~~Theresa Marshall~~				
~~Robert Coeraft~~	~~self~~			
~~Alex Davis~~			✓	
MELINDA REED	SELF	✓		
~~Ian Johnson~~	~~Freedom Vapes LLC~~		✓	
~~Ron Marshall~~	~~FREEDOM VAPES~~	✓		
Robin Turner	MCADSV	✓		
MARK MURPHY	MCAA MAPA MACOP	✓		
Susie Hamilton	SELF	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on February 7, 2017 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Excused: Sen. Scott Sales (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 237, 1/31/2017; HB 202, 2/1/2017; SB 172, 2/1/2017
Executive Action:	SB 153-Do Pass As Amended, SJ 7-Tabled

HEARING ON SB 172

Opening Statement by Sponsor:

00:01:00 Sen. Mike Lang (R), SD 17, opened the hearing on SB 172, Prohibit sale of fishing or hunting license if child support owed.

Proponents' Testimony:

00:04:35 Sarah Swanson Partridge, self, Glasgow
00:07:32 Nick Gevock, conservation director, Montana Wildlife Federation (MWF)

Opponents' Testimony:

None

Informational Testimony:

00:08:37 Hank Worsech, License Bureau chief, Fish, Wildlife, and Parks (FWP)
00:08:52 Chad Dexter, Child Support Enforcement Division, Department of Public Health and Human Services (DPHHS)

Questions from Committee Members and Responses:

00:09:15 Sen. Fielder
00:09:47 Mr. Worsech, FWP
00:10:25 Sen. Fielder
00:10:49 Mr. Gevock, MWF
00:11:30 Sen. Sands
00:12:02 Mr. Dexter, DPHHS
00:17:23 Sen. Gross
00:17:46 Mr. Worsech
00:18:03 Sen. Gross
00:18:10 Mr. Gevock
00:18:29 Chairman Regier
00:18:34 Sen. Fielder
00:19:57 Sen. Lang
00:23:18 Chairman Regier
00:23:29 Mr. Worsech
00:24:22 Sen. Hinkle
00:25:23 Mr. Dexter
00:29:33 Sen. Fielder
00:29:56 Mr. Dexter
00:32:01 Sen. MacDonald
00:32:19 Mr. Dexter

Closing by Sponsor:

00:35:43 Sen. Lang

HEARING ON HB 237

Opening Statement by Sponsor:

00:38:19 Rep. Ron Ehli (R), HD 86, opened the hearing on HB 237, Create grant program for behavioral health crisis response by law enforcement.

Proponents' Testimony:

00:41:56 Jim Anderson, sergeant, Gallatin County Sheriffs Department; coordinator, Crisis Intervention Team/Montana
00:45:18 Debbie Matteucci, director, Montana Board of Crime Control (MBCC)
00:50:06 Ingrid Hill, mental health counselor, Crisis Intervention Team/Montana
00:52:12 Shane Hildenstab, sergeant, Lewis and Clark County Sheriffs Department (LCSD); also for Sheriff Leo Dutton, Lewis and Clark County
00:52:45 Dave Galt, Montana Sheriffs and Peace Officers Association
00:53:07 Kathy McGowan, Montana Community Mental Health Centers
00:55:10 John Wilkinson, self
00:58:22 Sheryl Wood, associate director, Montana Association of Counties
00:59:26 Mike Foster, Sisters of Charity Leavenworth Healthcare Systems (SCLHS)
01:00:07 Bill Warden, St. Peter's Hospital, Helena; Bozeman Health
01:00:27 Mark Murphy, Montana County Attorneys Association (MCAA); Montana Association of Chiefs of Police; Montana Police Protective Association; instructor, Crisis Intervention Team/Montana
01:02:14 Jean Branscum, chief executive officer, Montana Medical Association
01:03:38 Beth Brenneman, Disability Rights Montana

Opponents' Testimony:

None

Informational Testimony:

01:04:27 Dennis Nyland, coordinator, Crisis Intervention Team/Montana

Questions from Committee Members and Responses:

01:04:50 Sen. Sands
01:05:29 Mr. Hildenstab, LCSD
01:06:09 Sen. MacDonald
01:06:47 Mr. Foster, SCLHS
01:08:12 Chairman Regier
01:08:29 Mr. Murphy, MCAA
01:09:52 Sen. Sands
01:10:09 Rep. Ehli
01:12:17 Ms. Matteucci, MBCC
01:16:12 Sen. Hinebauch
01:16:29 Ms. Matteucci
01:17:26 Sen. Vincent
01:17:41 Rep. Ehli

Closing by Sponsor:

01:17:52 Rep. Ehli

HEARING ON HB 202

Opening Statement by Sponsor:

01:20:35 Rep. Kirk Wagoner (R), HD 75, opened the hearing on HB 202, Generally revise laws related to government employees and officers.

Proponents' Testimony:

01:26:03 Carol Bondy, self; former Audit Bureau chief, Department of Public Health and Human Services

Opponents' Testimony:

None

Informational Testimony:

01:31:26 Al Smith, Montana Trial Lawyers Association (MTLA)
01:31:53 Jaimie MacNaughton, legal counsel, Commissioner of Political Practices (COPP)

Questions from Committee Members and Responses:

01:32:57 Sen. Vincent
01:33:10 Mr. Smith, MTLA
01:33:38 Sen. Fielder
01:34:50 Rep. Wagoner
01:37:27 Sen. Swandal
01:38:00 Mr. Smith
01:38:26 Sen. Hinkle
01:38:58 Rep. Wagoner
01:42:13 Sen. Gross
01:42:37 Rep. Wagoner
01:45:29 Sen. Sands
01:45:52 Ms. MacNaught, COPP

Closing by Sponsor:

01:46:38 Rep. Wagoner

01:47:58 Recess
02:00:28 Reconvene

Sen. Sales entered the hearing room.

EXECUTIVE ACTION ON SB 153

02:00:44 **Motion:** Sen. Fielder moved that **SB 153 DO PASS**.

02:01:30 **Motion:** Sen. Swandal moved that **SB 153 BE AMENDED**.
EXHIBIT(jus27a01)

Discussion:

02:02:27 Sen. MacDonald
02:03:53 Sen. Gross

02:05:35 **Vote:** Motion carried 9-1 by roll call vote with Sen. Gross voting no.

02:05:38 **Motion:** Sen. Fielder moved that **SB 153 DO PASS AS AMENDED**.

Discussion:

02:05:49 Sen. Sales
02:06:18 Sen. Swandal
02:08:07 Sen. Fielder

02:09:09 **Vote:** Motion carried 8-2 by roll call vote with Sen. S. Sales and Sen. Vincent voting no.

EXECUTIVE ACTION ON SJ 7

02:09:50 **Motion:** Sen. Fielder moved that **SJ 7 BE ADOPTED**.

Discussion:

02:10:23 Sen. Sales
02:11:39 Chairman Regier
02:11:58 Sen. Fielder
02:13:01 Sen. Hinkle
02:13:35 Chairman Regier
02:13:42 Sen. Gross

02:14:22 **Vote:** Motion failed 3-7 by roll call vote with Sen. Gross, Sen. MacDonald and Sen. K. Regier voting aye.

02:16:02 **Motion/Vote:** Sen. Fielder moved that **SJ 7 BE TABLED AND THE VOTE REVERSED**. Motion carried without objection.

ADJOURNMENT

Adjournment: 11:16 A.M.

_____
Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT(jus27aad.pdf)

SENATE JUDICIARY
Exhibit No. 1
Date: 2/7/17
Bill No. SB 153

Amendments to Senate Bill No. 153
1st Reading Copy

Requested by Senator Nels Swandal

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
February 3, 2017 (11:24am)

1. Page 1, line 16.
Following: "(2)"
Insert: "(a) A person convicted of a first offense of strangulation of a partner or family member shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. (b)"

2. Page 1, line 16.
Strike: "strangulation of a partner or family member"
Insert: "a second or subsequent offense under this section"

- END -

Montana State Legislature

2017 Session

Additional Documents include:

***Business Report**
***Roll Call(attendance)**
***Standing Committee Reports,**
***Table Bills, Fiscal reports etc.**
***Roll Call Votes**
***Witness Statements**
***Informational items**
***Visitor Registrations**
***Any other Documents;**
~Petitions if any?
~Any and all material handed in after the meeting end.

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2017 Legislative Scanner Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Tuesday, February 7, 2017
Place: Capitol

Time: 9:00 AM
Room: 303

BILLS and RESOLUTIONS HEARD:

HB 202 - Generally revise laws related to government employees and officers - Rep. Kirk Wagoner
HB 237 - Create grant program for behavioral health crisis response by law enforcement - Rep. Ron Ehli
SB 172 - Prohibit sale of fishing or hunting license if child support owed - Sen. Mike Lang

EXECUTIVE ACTION TAKEN:

SB 153- Do Pass As Amended
SJ 7-Tabled

Comments:

SEN. Keith Regier, Chair

MONTANA STATE SENATE

2017 JUDICIARY COMMITTEE

ROLL CALL

DATE: 2/7/17

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR KEITH REGIER	—	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	/	
VICE CHAIRMAN, SENATOR DIANE SANDS	/	
SENATOR STEVE HINEBAUCH	—	
SENATOR JEDEDIAH HINKLE	—	
SENATOR CHAS VINCENT	—	
SENATOR NELS SWANDAL	—	
~~**SENATOR MARY SHEEHY MOE**~~	—	—
SENATOR MARGARET MacDONALD	—	
SENATOR JEN GROSS	—	
PRESIDENT SCOTT SALES		

S:\2017CommitteeSecretaryFolders\Judiciary\Judiciary\CommRollCall.Judiciary.2013.wpd

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 153** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Keith Regier, Chair

And, that such amendments read:

1. Page 1, line 16.
Following: "(2)"
Insert: "(a) A person convicted of a first offense of strangulation of a partner or family member shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. (b)"

2. Page 1, line 16.
Strike: "strangulation of a partner or family member"
Insert: "a second or subsequent offense under this section"

- END -

Committee Vote:
Yes 8, No 2
Fiscal Note Required X

SB0153001SC.sjc

COMMITTEE FILE COPY

BILL TABLED NOTICE

SENATE JUDICIARY COMMITTEE

The **SENATE JUDICIARY COMMITTEE** TABLED

SJ 7 - Resolution to encourage an amendment to allow a temp appointment to the US House - Sen. Dee Brown

by motion, on **Tuesday, February 7, 2017** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

(For the Committee)

(For the Secretary of the Senate)

11:18 / 2/7
(Time) (Date)

February 7, 2017 (11:21am) Pam Schindler, Secretary Phone: 444-4618

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 2/7/17 BILL NO SB153 MOTION NO. 2

MOTION: amendment

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE	—		
~~SENATOR MARY SHEEHY MOE~~			
SENATOR NELS SWANDAL	—		
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS		—	
PRESIDENT SCOTT SALES	—		
SENATOR STEVE HINEBAUCH	—		
CHAIRMAN, SENATOR KEITH REGIER	—		

9/1

MONTANA STATE SENATE

ROLL CALL VOTE

2017 JUDICIARY COMMITTEE

DATE 2/7/17 BILL NO SB153 MOTION NO. 3

MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	~		
SENATOR CHAS VINCENT		~	
SENATOR DIANE SANDS	~		
SENATOR JEDEDIAH HINKLE	~		
~~SENATOR MARY SHEEHY MOE~~			~
SENATOR NELS SWANDAL	~		
SENATOR MARGARET MacDONALD	~		
SENATOR JEN GROSS	~		
PRESIDENT SCOTT SALES		~	
SENATOR STEVE HINEBAUCH	~		
CHAIRMAN, SENATOR KEITH REGIER	~		

8/2

MONTANA STATE SENATE

ROLL CALL VOTE

2017 JUDICIARY COMMITTEE

DATE 2/7/17 BILL NO SJ 7 MOTION NO. 1

MOTION: Be Adopted

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		—	
SENATOR CHAS VINCENT		—	
SENATOR DIANE SANDS		—	
SENATOR JEDEDIAH HINKLE		—	
~~SENATOR MARY SHEEHY MOE~~			
SENATOR NELS SWANDAL		—	
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES		—	
SENATOR STEVE HINEBAUCH		—	
CHAIRMAN, SENATOR KEITH REGIER	—		

3/7

(Reverse and table)

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 7, 2017
SB 172 - Prohibit sale of fishing or hunting license if child support owed
Sponsor: **Sen. Mike Lang**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Chad Dexter	MT CSED			X
Hank Worsech	MT FWP			X
Sarah Swanson Partridge		X		
Nick Gevock	MWF	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 7, 2017
HB 237 - Create grant program for behavioral health crisis response by law enforcement
Sponsor: **Rep. Ron Ehli**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Kathy McGowan	CMHCs, MSPOA	X		
DENNIS NYLAND	CIT MT / MENTAL HEALTH OMB.			X
Shane Hildenstab	CIT MT / Lewis & Clark County SO	X		
Ingrid Hill	CIT MT	X		
JIM ANDERSON	CIT MT / GALLATIN COUNTY S.O.	X		
MARK MURPHY	MCAA MACOP MPAA	X		
Sheryl Wood	MACO	X		
DR. GARY MIHELSON	NAMI	X		
DAVE GALT	~~MSPOA~~ MSPOA	X		
Deb Matteucci	MBCC	X		
Mike Foster	Catholic Hospitals	X		
Bill Warden	St. Pete's, Bozeman Health	X		
Jon Bronscum	MT Medical Assoc.	X		
Aimee GRMOLEZ	Billings Clinic	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 7, 2017
HB 202 - Generally revise laws related to government employees and officers
Sponsor: **Rep. Kirk Wagoner**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
CAROL BONDY	MYSELF	✓		
Jaime MacNaughton	COPP			✓
Al Smith	MTLA			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on March 31, 2017 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Seth Berglee, Vice Chair (R)
Rep. Virginia Court, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Jennifer Eck (D)
Rep. Bill Harris (R)
Rep. Kathy Kelker (D)
Rep. Casey Knudsen (R)
Rep. Theresa Manzella (R)
Rep. Shane A. Morigeau (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Lola Sheldon-Galloway (R)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Ellie Hill Smith (D)
Rep. Nate McConnell (D)
Rep. Matt Regier (R)
Rep. Barry Usher (R)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 22, 3/24/2017; SB 153, 3/24/2017; SB 197, 3/24/2017
Executive Action: SB 29, SB 99, SB 30, SB 26, SB 117, SB 179, SJ 15, SB 268

HEARING ON SB 197

Opening Statement by Sponsor:

00:01:19 Sen. Terry Gauthier (R), SD 40, opened the hearing on SB 197, Require child sexual abuse prevention efforts.

00:09:35 Rep. McConnell and Rep. Regier joined the meeting.

Proponents' Testimony:

00:12:25 Brian Kahn, Self
00:13:11 Rep. Usher joined the meeting.
00:14:57 Abigail St. Lawrence, Montana Association of Christians (MAC)
00:16:45 Greg Dorrington, Montana Medical Association (MMA)
00:17:39 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)

Opponents' Testimony: None

Informational Testimony:

00:19:00 Greg Mohr, Self

Questions from Committee Members and Responses:

00:19:23 Rep. McConnell
00:20:00 Sen. Gauthier
00:21:53 Rep. Court
00:22:15 Sen. Gauthier
00:22:34 Rep. Bishop
00:23:21 Sen. Gauthier
00:27:00 Rep. Usher
00:27:08 Rep. Court left the meeting.
00:29:48 Chair Doane
00:30:01 Rep. Manzella
00:31:52 Sen. Gauthier
00:33:37 Rep. Usher
00:34:02 Sen. Gauthier
00:35:57 Rep. Harris
00:36:53 Sen. Gauthier
00:38:08 Rep. Bishop
00:39:08 Sen. Gauthier
00:39:22 Rep. Eck left the meeting.
00:40:52 Rep. B. Brown
00:41:28 Sen. Gauthier
00:42:57 Helen Thigpen, Legislative Services Division (LSD)
00:43:26 Rep. Sheldon-Galloway
00:44:16 Sen. Gauthier

Closing by Sponsor:

00:44:56 Sen. Gauthier

HEARING ON SB 22

Opening Statement by Sponsor:

00:46:55 Sen. Sue Malek (D), SD 46, opened the hearing on SB 22, Revise laws re termination of parental rights when child is result of rape.

Proponents' Testimony:

00:49:58 Deb Matteucci, Montana Board of Crime Control (MBCC)
00:52:51 Brandi Ries, Ries Law Group
00:56:11 Shantelle Gaynor, Missoula Relationship Violence Services
00:58:19 Hannah Stark, Montana State University (MSU)
01:00:29 Jon Bennion, Department of Justice (DOJ)
01:01:02 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:03:31 Rep. McConnell
01:03:48 Helen Thigpen, Legislative Services Division (LSD)
01:04:20 Rep. McConnell
01:04:43 Brandi Ries, Ries Law Group

Closing by Sponsor:

01:05:18 Sen. Malek

HEARING ON SB 153

Opening Statement by Sponsor:

01:07:34 Sen. Margaret (Margie) MacDonald (D), SD 26, opened the hearing on SB 153, Revise laws on strangulation of a partner or family member.

Proponents' Testimony:

01:10:37 Juli Pierce, Yellowstone County
EXHIBIT(juh67a01)

01:18:35 Ole Olson, Department of Justice (DOJ)
EXHIBIT(juh67a02)

01:21:30 Hannah Stark, Montana State University (MSU)
01:24:28 Benjamin Halvorson, Billings
01:26:35 Marti Lambert, Gallatin County
01:27:54 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
EXHIBIT(juh67a03)

01:30:46 Shantelle Gaynor, Missoula Relationship Violence Services

01:35:18 Mark Murphy, Montana County Attorneys Association (MCAA) Montana Association of Chiefs of Police (MACOP), Montana Police Protective Association (MPPA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
01:36:12 Rep. Manzella
01:36:48 Ole Olson, DOJ
01:39:19 Rep. Morigeau
01:39:41 Ole Olson, DOJ
01:40:07 Rep. Mortensen
01:40:40 Juli Pierce, Yellowstone County
01:41:42 Rep. Usher
01:42:42 Benjamin Halvorson, Billings
01:43:31 Rep. Usher
01:44:12 Sen. MacDonald
01:44:45 Rep. Usher
01:46:02 Ole Olson, DOJ
01:47:48 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
01:49:02 Rep. Sheldon-Galloway
01:49:48 Ole Olson, DOJ
01:51:18 Rep. Bishop
01:52:05 Juli Pierce, Yellowstone County
01:54:19 Rep. Morigeau
01:54:23 Rep. Usher
01:54:54 Juli Pierce, Yellowstone County
01:55:16 Rep. McConnell
01:55:38 Juli Pierce, Yellowstone County

Closing by Sponsor:
01:57:34 Sen. MacDonald

02:00:07 Recess
02:13:40 Reconvene

HEARING ON SB 250

Opening Statement by Sponsor:
02:13:43 Sen. Nels Swandal (R), SD 30, opened the hearing on SB 250, Revise laws for prosecutorial immunity for Marsy's law.

Proponents' Testimony:
02:15:39 Mark Lambert, Self
02:18:00 Rich McLane, Bozeman Police Department, Montana Association of Chiefs of Police (MACOP)

02:21:15 Mark Murphy, Montana County Attorneys Association (MCAA), Montana Association of Chiefs of Police (MACOP), Montana Police Protective Association (MPPA)
02:23:36 Jon Bennion, Department of Justice (DOJ)
02:25:29 Dave Galt, Montana Sheriffs and Peace Officers Association (MSPOA)
02:25:45 Sara Sexe, Great Falls
EXHIBIT(juh67a04)

02:30:58 Adrianne Cotton, Department of Corrections (COR)

Opponents' Testimony: None

Informational Testimony:
02:32:14 Al Smith, Montana Trial Lawyers Association (MTLA)
02:35:48 Chuck Denowh, Marsy's Law For All

Questions from Committee Members and Responses:
02:36:23 Rep. McConnell
02:36:42 Sen. Swandal
02:37:32 Rep. C. Knudsen
02:37:51 Chuck Denowh, Marsy's Law For All
02:39:06 Chair Doane
02:39:31 Jon Bennion, DOJ
02:40:37 Rep. McConnell
02:41:08 Jon Bennion, DOJ
02:41:55 Rep. McConnell
02:42:25 Sen. Swandal
02:42:45 Rep. B. Brown
02:43:28 Sen. Swandal
02:44:57 Rep. C. Knudsen
02:46:17 Sen. Swandal
02:47:18 Rep. Usher
02:47:58 Sen. Swandal

Closing by Sponsor:
02:48:11 Sen. Swandal

Committee Business:
02:48:48 Rep. Kelker
02:48:55 Chair Doane

02:49:35 Recess
02:58:53 Reconvene

EXECUTIVE ACTION ON SB 29

Discussion:
02:59:57 Helen Thigpen, Legislative Services Division (LSD)

03:00:52 **Motion:** Rep. Berglee moved that **SB 29 BE CONCURRED IN**.

03:01:04 **Motion:** Rep. Wagoner moved that **SB 29 BE AMENDED**.
EXHIBIT(juh67a05)

Discussion:
03:01:22 Helen Thigpen, LSD

03:01:57 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Eck, Rep. Hill Smith and Rep. Perry voted by proxy.

03:02:11 Rep. Eck joined the meeting

03:02:37 **Motion:** Rep. Berglee moved that **SB 29 BE CONCURRED IN AS AMENDED**.

Discussion:
03:02:48 Rep. Regier

03:03:27 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Hill Smith and Rep. Perry voted by proxy. Rep. McConnell will carry the bill.

EXECUTIVE ACTION ON SB 99

Discussion:
03:04:12 Helen Thigpen, LSD

03:04:42 **Motion:** Rep. Berglee moved that **SB 99 BE CONCURRED IN**.

03:04:49 **Motion:** Rep. Berglee moved that **SB 99 BE AMENDED**.
EXHIBIT(juh67a06)

Discussion:
03:04:59 Helen Thigpen, LSD
03:06:09 Rep. Berglee
03:06:28 Rep. B. Brown
03:06:34 Rep. Berglee

03:07:01 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Hill Smith and Rep. Perry voted by proxy.

03:07:37 Rep. Wagoner left the meeting

03:08:32 **Motion/Vote:** Rep. Berglee moved that **SB 99 BE CONCURRED IN AS AMENDED**. Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Berglee will carry the bill.

EXECUTIVE ACTION ON SB 30

Discussion:
03:09:35 Helen Thigpen, LSD

03:09:55 **Motion:** Rep. Berglee moved that **SB 30 BE CONCURRED IN**.

Discussion:
03:11:27 Rep. C. Knudsen
03:11:57 Rep. McConnell
03:13:49 Rep. Usher

03:14:33 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Kelker will carry the bill.

EXECUTIVE ACTION ON SB 26

Discussion:
03:15:29 Helen Thigpen, LSD

03:16:04 **Motion:** Rep. Berglee moved that **SB 26 BE CONCURRED IN**.

Discussion:
03:16:13 Rep. Bishop
03:16:45 Rep. Morigeau left the meeting.

03:17:12 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Hill Smith, Rep. Morigeau, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Manzella will carry the bill.

EXECUTIVE ACTION ON SB 117

Discussion:
03:18:10 Helen Thigpen, LSD

03:18:39 **Motion:** Rep. Berglee moved that **SB 117 BE CONCURRED IN**.

Discussion:
03:18:50 Rep. B. Brown
03:19:25 Rep. Usher
03:19:31 Rep. Morigeau joined the meeting.
03:19:43 Helen Thigpen, LSD
03:20:01 Rep. Bishop
03:21:36 Rep. C. Knudsen

03:21:59 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Manzella will carry the bill.

EXECUTIVE ACTION ON SB 179

Discussion:
03:23:44 Helen Thigpen, LSD

03:24:02 **Motion:** Rep. Berglee moved that **SB 179 BE CONCURRED IN**.

Discussion:
03:24:11 Rep. McConnell
03:24:52 Chair Doane
03:24:54 Rep. McConnell
03:26:47 Rep. B. Brown
03:26:52 Rep. Usher

03:27:30 **Vote:** Motion failed 3-16 by roll call vote with Rep. Bishop, Rep. Eck and Rep. Morigeau voting aye. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy.

03:28:46 **Substitute Motion:** Rep. Berglee moved that **SB 179 BE TABLED**. Motion was without objection.

Discussion:
03:28:50 Rep. Hill Smith joined the meeting.
03:28:57 Rep. McConnell

EXECUTIVE ACTION ON SJ 15

Discussion:
03:29:31 Helen Thigpen, LSD

03:29:58 **Motion:** Rep. Berglee moved that **SJ 15 BE CONCURRED IN**.

Discussion:
03:30:08 Rep. Morigeau
03:32:46 Rep. Manzella
03:33:35 Rep. Harris
03:34:02 Rep. Usher
03:35:20 Rep. Morigeau

03:36:05 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Manzella will carry the bill.

EXECUTIVE ACTION ON SB 268

Discussion:
03:37:10 Helen Thigpen, LSD

03:38:38 **Motion:** Rep. Berglee moved that **SB 268 BE CONCURRED IN**.

03:38:51 **Motion:** Rep. Berglee moved that **SB 268 BE AMENDED**.
EXHIBIT(juh67a07)

Discussion:
03:39:15 Rep. Kelker
03:39:48 Helen Thigpen, LSD
03:40:24 Rep. Manzella
03:40:39 Rep. McConnell
03:41:09 Chair Doane
03:41:14 Rep. McConnell
03:41:52 Rep. Eck
03:42:14 Rep. Bishop
03:43:08 Chair Doane
03:43:13 Rep. Bishop
03:43:24 Rep. Berglee
03:43:45 Rep. Harris
03:43:59 Helen Thigpen, LSD
03:45:48 Rep. Harris

03:46:37 **Vote:** Motion carried 17-2 by roll call vote with Rep. Harris and Rep. Sheldon-Galloway voting no. Rep. Court, Rep. Wagoner and Rep. Perry voted by proxy.

03:47:34 **Motion:** Rep. Berglee moved that **SB 268 BE CONCURRED IN AS AMENDED**.

Discussion:
03:47:42 Rep. Eck
03:48:16 Rep. C. Knudsen
03:48:51 Rep. McConnell

03:49:14 **Vote:** Motion carried 15-4 by roll call vote with Rep. Eck, Rep. Harris, Rep. McConnell and Rep. Sheldon-Galloway voting no. Rep. Court, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Wagoner will carry the bill.

ADJOURNMENT

Adjournment: 03:50:51

Sara Fleming, Secretary

sf

Additional Documents:

EXHIBIT(juh67aad.pdf)

EXHIBIT 1
DATE 3/31/17
SB 153

LOUISVILLE METRO POLICE DEPARTMENT
POLICE SURGEON

GREG FISCHER
MAYOR

STEVE CONRAD
CHIEF OF POLICE

WILLIAM S. SMOCK, MD, F.A.C.E.P.
POLICE SURGEON

March 30, 2017

Ms. Juli M. Pierce
Chief Deputy County Attorney
Yellowstone County Attorney's Office
Billings, MT 59107

Re: Senate Bill 153

Dear Ms. Pierce:

Strangulation is the application of external pressure applied to the neck. This external pressure can block blood flow to and from the brain, collapse a victim's airway or both. All of these conditions, if maintained for a period of time, can cause serious damage to structures in the neck and cause life-threatening brain damage, including death. As little as 4 pounds of pressure will block the blood flowing from the brain back to the heart and only 11 pounds of pressure is need to completely occlude the flow of oxygenated blood to the brain. The lack of oxygenated blood flowing to the brain is termed anoxia, which causes brain cell death.

Brain cells will begin to die within seconds after they are deprived of oxygenated blood. The application of pressure on the carotid arteries in the neck can result in an anoxic brain injury in as little as 6.8 seconds. The first sign of a brain injury is the loss of consciousness, followed by seizures, loss of bladder and bowel control then finally the cessation of respirations. With every second that passes without oxygenated blood, millions of brain cells are dying. If blood flow is not restored, a person will suffer enough brain damage within 1 to 2.5 minutes to die. The difference between a surviving victim's permanent anoxic brain injury and death is only a matter of seconds.

In my career as an emergency physician, medical examiner and police surgeon I have treated and evaluated hundreds of living and dead victims of strangulation. The blockage of oxygenated blood to the brain through pressure on the neck is the easiest way for one human being to inflict terror, demonstrate control, cause serious neck injuries and brain damage, inflict long-term psychological trauma or kill another. I would strongly encourage the legislators of Montana to hold individuals who strangle other human beings accountable for their actions.

Yours sincerely,

William S. Smock, M.D.

WWW.LOUISVILLEKY.GOV
633 WEST JEFFERSON STREET LOUISVILLE, KENTUCKY 40202 502.574.7080 FAX 502.574.7410 bill.smock@louisvilleky.gov

EXHIBIT 2
DATE 3/31/17
SB 153

CRIMINAL STRANGULATION/ IMPEDING BREATHING

Last Updated **November 2014**

Summary of Content

This document is a survey of U.S. federal, state, and territorial criminal statutes related to strangulation and other acts that impede breathing, such as asphyxiating, choking, smothering and suffocation.

Due to federalism and the separation of powers, each state legislature enacts its own laws independent of each other and mostly independent of the Federal government.[1] While some state laws influence each other, many solutions/remedies enacted into law on a single topic often vary greatly from state to state. Laws regarding strangulation, suffocation, and impeding breathing are no different. In 2001 Strack, McClane, and Hawley published a study, which reviewed 300 cases of domestic violence involving non-fatal strangulation and linked strangulation to escalating violence and manifested homicidal intent towards victims.[2] Afterwards, many states enacted significant reforms. Prior to that time, strangulation mostly appeared in statutes only as a means to commit murder, or as form of unreasonable child discipline. [3] Currently, forty-four states, the District of Columbia, the Federal government and two territories have some form of strangulation or impeding breathing statute.

This survey has categorized impeding breathing into laws related to children, the elderly, criminal procedure, strangulation in the context of a familial or domestic relationship, increased penalty for committing strangulation during other felony crimes, and stand-alone felony statutes.

---

[1] Theodore J. Lowi et al., *Chapter 3: Federalism And The Separation Of Powers- Chapter Study Outline* in American Government: Power and Purpose (12th ed. 2012) available at, http://wwnorton.com/college/polisci/american-government12/brief/ch/03/outline.aspx

[2] Gail B. Strack et. al, *A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues*, 21 J. Emergency Med. 303 (2001); George E. McClane et. al, *A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation Of The Surviving Victim*, 21 J. Emergency Med. 311, 314 (2001); Dean A. Hawley et al., *A Review Of 300 Attempted Strangulation Cases Part III: Injuries In Fatal Cases* 21 J. Emergency Med. 317 (2001).

[3] Eg. Mich. Comp. Laws Ann. § 750.91 (2014): Attempt To Murder (Enacted 1931); Mass. Gen. Laws Ann. CH. 265 § 16 (2014): Attempt to Murder (enacted 1832).

Search terms: (strangul! strangl! (breath! & intep!) choki! suffocate! % driving % breathalyzer)

U.S. Strangulation and Impeding Breathing Statutes[4]

	No Statute	Child Abuse	Elder Abuse	Criminal Procedure	Enhanced Penalties For Existing Felony	Familial Relationship Domestic Violence	Strangulation Specific Felony	
AL				X		X		
AK					X			
AZ					X			
AR		X						
CA						X		
CO			X					
CT							X	
DE		X						
DC		X						
FL		X				X		
GA					X			
HI				X		X		
ID						X		
IL				X	X	X		
IN							X	
IA				X		X		
KS	X							
KY	X							
LA				X		X		*
ME				X	X			
MD					X			
MA				X				
MI					X	X		
MN		X				X		
MS					X			
MO						X		
MT	X							
NE				X			X	
NV				X	X	X		
NH					X	X		
NJ	X							

	No Statute	Child Abuse	Elder Abuse	Criminal Procedure	Enhanced Penalties For Existing Felony	Familial Relationship Domestic Violence	Strangulation Specific Felony	
NM	X							
NY							X	
NC					X			
ND								*
OH				X				
OK				X	X	X		*
OR		X	X	X			X	
PA		X						
RI						X		
SC			X					
SD					X			
TN					X			
TX					X			
UT		X						
VT					X			
VA					X	X	X	
WA		X	X					
WV				X	X			
WI							X	
WY						X		
F					X			
AS	X							
GU			X					
PR	X							
VI		X						

[4] *Other: Duties of Medical Professionals

The survey is up-to-date as of **September 2014.** The following search terms were used to compile the statutes.[5] Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. The dates on the citation of the statutes indicate they are up-to-date as of the year listed. The credits below each statute listed for its date of enactment and history.

For further assistance, consult the National District Attorneys Association's National Center for Prosecution of Child Abuse at 703.549.9222, or via the free online prosecution assistance service http://www.ndaa.org/ta_form.php

Funded By U.S. Department of Justice Grant # 2010-MC-CX-K065

[5] STRANGUL! STRANGL! (BREATH! & ABUSE) CHOKI! SUFFOCATE! % DRIVING % BREATHALYZER

EXHIBIT 3
DATE 3/31/17
SB 153

Vote "Do Pass" on SB 153

Sponsor: Sen. Margie MacDonald (Billings)

Montana Coalition
Against Domestic & Sexual Violence

406.443.7794 • 888.404.7794
PO Box 818
Helena, Montana 59624

About SB 153
SB 153 addresses the crime of strangulation. It creates the felony offense of strangulation of a partner or family member, with punishment of up to 20 years in state prison for second and subsequent offenses (first offense: maximum sentence of five years), along with other penalties. Under this bill, a person would commit this offense if s/he purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by:

(a) applying pressure on the throat or neck of the partner or family member; or
(b) blocking air flow to the nose and mouth of the partner or family member.

SB 153 also incorporates this offense into other domestic violence provisions in the Montana Code (provides victim eligibility for an order of protection, eligibility for a criminal no contact order, eligibility for a change to a parenting plan, etc).

Why Should House Judiciary Pass This Bill?
Quite simply, SB 153 will help to save lives. Serial strangulation is a strong indicator of lethality in domestic violence relationships. According to the Training Institute on Strangulation Prevention, between 47 and 68 percent of domestic violence victims have been strangled by their partners. When a perpetrator strangles a domestic partner one time, the likelihood the offender will end up killing the other person (often with a more explicitly deadly weapon, like a gun or a knife) increases significantly.

The Attorney General's Domestic Violence Fatality Review Team has **consistently requested** that Montana pass a statute that creates a felony offense of strangulation. Reviews of Montana cases indicate that non-fatal serial strangulation in a domestic violence relationship often increases the likelihood of a fatality in that relationship.

Does Montana Need this Statutory Change?
Montana's current law does not distinguish the serious offense of strangulation from other crimes of assault. For example, in 2015, John Patrick Kinnin was accused of strangling his wife until she blacked out and accused of slamming her head against a wall. The *Billings Gazette* reported at the time that Kinnin allegedly kicked in the door, strangled [his partner] until she blacked out and pounded her head against a wall, causing a cut above her left eyebrow. According to the County Attorney, this case was initially charged as a felony aggravated assault and misdemeanor partner or family member assault. However, the case was eventually pled down to a less-serious criminal endangerment charge due in part to a concern that the victim's statement itself did not meet the current standard for serious felony assaults in Montana. If a strangulation statute had existed, Kinnin could have been properly prosecuted with that offense.

Will Montana Be an Outlier in Passing the Bill? No, in fact Montana needs to catch up with other states. Montana is only one of 7 states who have not passed some sort of statute that directly addresses the crime of strangulation.

Senate Judiciary Proceedings: No opponents testified in Senate Judiciary. This bill passed Senate Judiciary on an 8-2 vote, and passed the Senate 43-6 on Third Reading.

Montana State Legislature

65th Montana Legislature - 2017

ADDITIONAL DOCUMENTS

Business Report

Signed by Chairman

Roll Call

Attendance

Standing Committee Reports

Tabled Bills

Fiscal Reports

Roll Call Votes

Proxy Forms

Visitor Registration

Additional Documents

Witness Statements that are not presented as exhibits. All informational items handed in after meeting. Petitions; etcetera.

- ***Any documents which were submitted after the committee hearing has ended and/or was submitted late within 24 hours regarding information in the committee hearing.***

YOU MAY VIEW THE ORIGINAL DOCUMENTS

AT THE MONTANA HISTORICAL SOCIETY

MONTANA HISTORICAL SOCIETY ARCHIVES
225 N. ROBERTS
HELENA, MT 59620-1201
2017 LEGISLATIVE SESSION
E-DOCUMENT SPECIALIST: SUSIE HAMILTON

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Friday, March 31, 2017
Time: 8:00 AM
Place: Capitol
Room: 137

BILLS and RESOLUTIONS HEARD:
SB 22 - Revise laws re termination of parental rights when child is result of rape - Sen. Sue Malek
SB 153 - Revise laws on strangulation of a partner or family member - Sen. Margaret (Margie) MacDonald
SB 197 - Encouraging the office of public instruction to prevent child sex trafficking - Sen. Terry Gauthier

EXECUTIVE ACTION TAKEN:
SB 29 - Be Concurred In As Amended
SB 99 - Be Concurred In As Amended
SB 30 - Be Concurred In
SB 26 - Be Concurred In
SB 117 - Be Concurred In
SB 179 - Be Tabled
SJ 15 - Be Concurred In
SB 268 - Be Concurred In As Amended

Comments:

REP. Alan Doane, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 3/31/17

NAME	PRESENT	ABSENT/EXCUSED
REP. SETH BERGLEE, VICE CHAIR	✓	
REP. VIRGINIA COURT, VICE CHAIR	✓	
REP. KATHY KELKER	✓	
REP. BOB BROWN	✓	
REP. BARRY USHER		✓
REP. DALE MORTENSEN	✓	
REP. JENNY ECK	✓	
REP. LAURIE BISHOP	✓	
REP. ELLIE HILL SMITH		✓
REP. NATE MCCONNELL		✓
REP. KIRK WAGONER	✓	
REP. MATT REGIER		✓
REP. BILL HARRIS	✓	
REP. LOLA SHELDON-GALLOWAY	✓	
REP. THERESA MANZELLA	✓	
REP. CASEY KNUDSEN	✓	
REP. ZAC PERRY	✓	
REP. SHANE MORIGEAU	✓	
REP. ALAN DOANE, CHAIR	✓	

19 MEMBERS

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 117** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Allan Doane, Chair

To be carried by Representative Theresa Manzella

- END -

Committee Vote:
Yes 11, No 8
Fiscal Note Required __

SB0117001SC16510.hts

CW 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Joint Resolution 15** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Theresa Manzella

- END -

Committee Vote:
Yes 11, No 8
Fiscal Note Required __

SJ0015001SC16510.hts

CW 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 268** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Kirk Wagoner

And, that such amendments read:

1. Title, page 1, line 5.
Strike: "STATE"
Insert: "PUBLIC"
Following: "EMPLOYEE"
Insert: "OR RETIREE"

2. Page 2, line 6.
Following: line 6

"NEW SECTION. **Section 3. Compromise or settlement of claims by public employees regarding retirement service credits.** A retiree from a public employer who is a party to a compromise or settlement regarding retirement service credits or benefits may waive the right of individual privacy and allow a governmental entity to release any or all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

Insert: "NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [section 3]."
Renumber: subsequent sections

Committee Vote:
Yes 15, No 4
Fiscal Note Required __

SB0268001SC15257.hts

12:50 03-31-17

3. Page 2, line 11.
Strike: "2015"
Insert: "2010"

- END -

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 26** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Laurie Bishop

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0026001SC17723.hts

AW 12:35 03-31

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 99** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Seth Berglee

And, that such amendments read:

1. Page 1, line 15.
Strike: "prohibits, restricts, or requires"
Insert: "has the primary purpose of prohibiting, restricting, or requiring"

2. Page 2, line 14.
Insert: "(4) Nothing in this section may be construed to prohibit or otherwise limit a peace officer, state employee, or employee of a political subdivision from cooperating in an action that does not have the primary purpose of enforcing a federal ban."

- END -

Committee Vote:
Yes 11, No 8
Fiscal Note Required __

SB0099001SC16493.hts

Adj. 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

March 31, 2017
Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 30** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Kathy Kelker

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0030001SC16507.hts

AM 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 29** (third reading copy -- blue) be **concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Nate McConnell

And, that such amendments read:

1. Page 11, line 10.
Following: "relationship"
Insert: "by itself"

2. Page 11, line 11.
Following: "does not"
Strike: "by itself"

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0029001SC16397.hts

CW 12:30 03-31-17

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

SB 179 - Revise offer of judgment laws - Sen. Steve Fitzpatrick

by motion, on **Friday, March 31, 2017** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Sara Fleming
(For the Committee)

CW
(For the Chief Clerk of the House)

3:05 (Time), 04-11-17 (Date)

April 11, 2017 (2:56pm) Sara Fleming, Secretary Phone: 444-4709

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB268 DATE 3/31/17

MOTION Be Concurred In as Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		✓
REP. VIRGINIA COURT, VICE CHAIR	✓		✓
REP. KATHY KELKER	✓		
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP	✓		
REP. ELLIE HILL-SMITH	✓		
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS		✓	
REP. LOLA SHELDON-GALLOWAY		✓	
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY	✓		✓
REP. SHANE MORIGEAU	✓		
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB268 DATE 3/31/17

MOTION Be Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	√		√
REP. VIRGINIA COURT, VICE CHAIR	√		√
REP. KATHY KELKER	√		
REP. BOB BROWN	√		
REP. BARRY USHER	√		
REP. DALE MORTENSEN	√		
REP. JENNY ECK	√		
REP. LAURIE BISHOP	√		
REP. ELLIE HILL-SMITH	√		
REP. NATE MCCONNELL	√		√
REP. KIRK WAGONER	√		√
REP. MATT REGIER	√	√	
REP. BILL HARRIS		√	
REP. LOLA SHELDON-GALLOWAY	√	√	
REP. THERESA MANZELLA	√		
REP. CASEY KNUDSEN	√		√
REP. ZAC PERRY	√		√
REP. SHANE MORIGEAU	√		
REP. ALAN DOANE, CHAIR	√		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SJ 15 DATE 3/31/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		✓
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		✓
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 179 DATE 3/31/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR		√	
REP. VIRGINIA COURT, VICE CHAIR		√	√
REP. KATHY KELKER		√	
REP. BOB BROWN		√	
REP. BARRY USHER		√	
REP. DALE MORTENSEN	√	√	
REP. JENNY ECK	√		
REP. LAURIE BISHOP	√		
REP. ELLIE HILL-SMITH		√	√
REP. NATE MCCONNELL		√	
REP. KIRK WAGONER		√	√
REP. MATT REGIER		√	
REP. BILL HARRIS		√	
REP. LOLA SHELDON-GALLOWAY		√	
REP. THERESA MANZELLA		√	
REP. CASEY KNUDSEN		√	
REP. ZAC PERRY	√	√	√
REP. SHANE MORIGEAU	√		
REP. ALAN DOANE, CHAIR		√	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB117 DATE 3/31/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB99 DATE 3/31/17

MOTION Be Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 90 DATE 3/31/17

MOTION Concur in as Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER	✓	✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL	✓	✓	✓
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU	✓	✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country Jenny

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the ~~State Administration~~ Judiciary Committee.

I desire to leave my proxy vote with Rep. _____.

BILL	AYE	NO
SB29	✓	
SB002901	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ (Signature) Date 03/31/2017

Ecke

Shane

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB26	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ Date 03/31/2017
(Signature)

Ellie

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB 29	✓	
SB002901	✓	
SB 99		✓
SB009901, AHT		✓
SB 30	✓	
SB 26	✓	
SB 117		✓
SB179		✓
~~SJ15~~		

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Nate McConnell for any amendments proposed on this date.

Rep. Ellie Hill Smith
(Signature)

Date 03/31/2017

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Beyer.

BILL	AYE	NO
SB 99	X	
SB 30	X	
SB 26	X	
SB 117	X	
SB 179		X
SJ 15	X	
SB026801.AJB	X	
SB 268	X	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Berglee for any amendments proposed on this date.

Rep. _____ Date 3/21/17
(Signature)

a wagner

The Big Sky Country Virginia

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB 29	✓	
SB 002901	✓	
SB 99		✓
SB 009901. AHT		✓
SB. 30	✓	
SB 26	✓	
SB 117		✓
SB 179		✓
SJ 15		✓
SB 268	✓	
SB 026801. AJB	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. Virginia Court
(Signature)

Date 03/31/2017

Zac

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB 29	✓	
SB 002901	✓	
SB 99		✓
SB 009901, AHT		✓
SB 30	✓	
SB 26	✓	
SB 117		✓
SB 179		✓
SJ 15		✓
SB 268	✓	
SB 026801, AJB	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ (Signature)

Date 03/31/2017

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 250 - Revise laws for prosecutorial immunity for Marsy's law
Sponsor: **Sen. Nels Swandal**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Rich McLane	MACoP, city of BZN	X		
Jon Bennion	MT DOJ	X		
Kelly Lynch	MT League of Cities & Towns	X		
Sara Sexe	City of Great Falls	X		
MARK MURPHY	MCHA, MPPA	X		
Jeannie Cotton	Corrections	X		
Al Smith	MTLA			X
DAVE GALT	MSPOA	X		
Chuck Denowh	Marsys Law for All			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 197 - Require child sexual abuse prevention efforts
Sponsor: **Sen. Terry Gauthier**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
TERRY KAHN	SELF	✓		
Greg Derrington	MMA	x		
Abigail St. Lawrence	MAC	X		
Robin Turne	MCHASN	✓		
Craig Maher	Private Individual			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 22 - Revise laws re termination of parental rights when child is result of rape
Sponsor: **Sen. Sue Malek**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Deb Matteucci	MTBCC	✓		
Jon Bennion	MT DOJ	✓		
Robin TURNER	MCADSV	✓		
Shantelle Graynor	Missoula Relationship Violence Services	X		
Hannah Stark	Advocate - MT State	✓		
Brandi Ries	Ries Law Group PC	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 153 - Revise laws on strangulation of a partner or family member
Sponsor: **Sen. Margaret (Margie) MacDonald**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Marty Lambert	Gallatin City	X		
MARK MURPHY	MCAR MACOP MPPA	X		
Shantelle Gaynor	MSLA Relationship Violence Services	X		
Deb Matteucci	MBCC	X		
Al Olson	DOJ	X		
Juli Pierce	Yellowstone City	X		
Ben Halverson	City of Billings	X		
Hannah Stark	Advocate - MT State	X		
Robin Turner	MCADSV	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

ADDITIONAL
DOCUMENT

Amendments to Senate Bill No. 197
3rd Reading Copy

Requested by Senator Terry Gauthier

For the House Judiciary Committee

Prepared by Padraic McCracken
March 22, 2017 (2:43pm)

1. Title, page 1, line 4.
Strike: "REQUIRING"
Insert: "ALLOWING"

2. Title, page 1, line 6.
Following: "~~TRAFFICKING~~"
Insert: "AND CHILD SEX TRAFFICKING"

3. Page 1, line 14.
Following: "**~~trafficking~~**"
Insert: "**and child sex trafficking**"

4. Page 1, line 15.
Strike: "shall"
Insert: "may"

5. Page 1, line 16.
Following: "~~trafficking~~"
Insert: "and child sex trafficking"

6. Page 1, line 16.
Strike: "must"
Insert: "may"

7. Page 1, line 17.
Following: "abuse"
Insert: "and child sex trafficking"

8. Page 1, line 21.
Following: "~~trafficking~~"
Insert: "and child sex trafficking"

9. Page 1, line 22.
Following: "~~trafficking~~"
Insert: "and child sex trafficking"

10. Page 1, line 27.
Following: "ABUSE"
Insert: "and child sex trafficking"

11. Page 1, line 28.
Following: "ABUSE"
Insert: "and child sex trafficking"

12. Page 2, line 1.
Following: "~~trafficking~~"
Insert: "and human trafficking"

13. Page 2, line 9 through line 10.
Strike: section 3 in its entirety

- END -

ADDITIONAL DOCUMENTS

MEMORANDUM

To: Members of House Judiciary

From: Kelly A. Lynch, Deputy Director/General Counsel
Montana League of Cities and Towns

Date: March 30, 2017

Re: Statutory Provisions for Disposal of Certain Property – SB 200

The Montana statutes have existing provisions for the disposal of evidence seized in relationship to a crime, firearms, biological evidence, abandoned vehicles, intangible personal property, and livestock. SB 200 will provide a new process for the disposal of lost or unclaimed tangible personal property that comes into the possession of law enforcement, and provide a streamlined process for the disposal of property that was seized as evidence in a case heard in a court of lower jurisdiction. The provisions of SB 200 will only change the process currently set forth for the disposal of evidence seized in a case in 46-5-307, MCA; the other provisions of law will remain in effect.

Section 46-5-307, MCA – Petition process for destruction, disposal, or use of evidence. This statute provides the current process for disposal of property seized as evidence in a case. Requires petition to the court and court order for disposal of property. Requires contraband to be destroyed, or in some circumstances, allows for contraband to be used for law enforcement training purposes. SB 200 would streamline this process for evidence seized in misdemeanor and other cases brought in courts of limited jurisdiction, providing 6 months for owner to claim property after conclusion of the case.

Section 46-5-313, MCA – Controls disposal of firearms held by law enforcement when legal owner cannot be determined. Law enforcement must sell the firearm to a licensed dealer; proceeds must be deposited in general fund of the governmental entity. SB 200 will not have any impact on this section of law and it must still be followed.

Section 46-21-111, MCA – Controls disposal of biological evidence by law enforcement. Must be held minimum of 3 years after conviction or otherwise established by court order. SB 200 will not have any impact on this section of law and it must still be followed.

Section 61-12-401, MCA – Title 61, Chapter 12, Part 4 of the MCA provides the process for the removal and sale of abandoned vehicles by law enforcement. The law enforcement agency must provide published notification or certified mail notice, and if the vehicle is not claimed within 30 days the agency may sell the vehicle at a public auction. Junk vehicles may be disposed of as set forth in 75-10-521, MCA. Proceeds must be deposited in the county road or city street fund, as applicable. SB 200 will not have any impact on this section of law and it must still be followed.

Section 70-9-802, MCA – Unclaimed Property Act provides process for state to take custody of and deliver unclaimed intangible property, defined as money, gift certificates, unused tickets, stock interests, bonds, insurance amounts due, trust distributions, and tangible property held in a safe deposit box. This is the state unclaimed property system discussed at the hearing on SB 200. SB 200 would not have an effect on this statute; if a local governmental entity comes into possession of intangible property within the definition of the Unclaimed Property Act, it must be reported to the Department of Revenue to take custody of the property.

Section 81-4-401, MCA – These statutes regulate the containment of livestock. The statute provides a process for impounding such animals if running at large, specific provisions for notifying the owner and/or the Department of Livestock, and allows for the retention or killing of livestock as set forth therein. SB 200 will not affect these statutes and they must still be followed by local governments.

ADDITIONAL DOCUMENTS

February 1, 2017

Good Afternoon-

My name is Cat Otway, RN, SANE-A, SANE-P and I work for First Step Resource Center at St. Patrick's Hospital in Missoula, MT. I have been a nurse for 28 years and a forensic nurse for 10 years. My passion, experience and training allow me to help save lives by improving the knowledge and response of healthcare providers and law enforcement to non-fatal strangulation violence.

I strongly urge you to support SB 153. This bill directly addresses the domestic violence issues we see across Montana. Most states that currently have a strangulation statute are adding "suffocation" to the statute. Currently, there are 41 states with a "Strangulation/Suffocation" law. Montana needs to get it right the first time. As a sexual assault nurse, we know that 25% of all sexual assaults include a strangulation/suffocation component. Suffocation is often overlooked as a method of strangulation, but often used during the assault.

My particular focus of forensic nursing has been on the topic of strangulation. Since 2010, I have conducted numerous presentations to nurses, physicians, law enforcement officers, judges, social workers, advocates, dentists, attorneys, and emergency medical/ first responders throughout Montana and Wyoming. I am often called on as an expert witness to testify and educate jury members on the lethality of strangulation injuries. In 2016, I attended the nationally-acclaimed Advanced Strangulation Course at the Training Institute on Strangulation Prevention (TISP) in San Diego and currently sit on the National Strangulation Task Force. I have authored two strangulation articles for the Missoulian on behalf of St. Patrick Hospital in order to reach a broad public audience and educate the community on the difference between choking and strangulation, with a powerful message that strangulation leads to unconsciousness within seconds and death occurring as quickly as 62 seconds. My knowledge of non-fatal strangulation is currently part of the curriculum at the Montana Law Enforcement Academy where I present to student and staff quarterly.

Passing a stand-alone strangulation statute makes sense to hold offenders accountable and protect future victimization, trauma, injury and death. Most recent research tells us that a man who strangles woman is more likely to shoot and kill a cop. By holding offenders accountable, we protect our entire community. Strangulation is not just a "slap in the face." It's the fastest way to kill someone without leaving a mark!

Strangulation is a highly lethal form of assault. The anatomy of the human neck contains muscles, vessels, cartilage, and bone. Strangulation occurs when external pressure is applied to the neck and the blood and/or the air supply is blocked from getting to the brain. Damage to the carotid and/or jugular vessels may result in a dissection of the vessel, resulting in blood clots that can later dislodge, go straight to the brain, leading to a stroke or death. Vocal changes occur in 50% of strangulation victims. Patients experience excruciating pain. Strangulation is an anoxic event, meaning the blood supply is cut off to the brain, depriving the victim of oxygenation, and brain cell quickly die. The trauma of strangulation is

a neurological event. Symptoms may include but are not limited to: loss of memory, behavior changes, headaches, vomiting, blood-red eyes, visual changes, swelling of neck structures, chest pain, bruising, abrasions, difficulty swallowing, sore throat, ringing in the ears, loss of hearing, respiratory distress, difficulty breathing, carotid artery dissection, stroke and eventually death. Strangulation remains a high lethality indicator. Research tells us that a woman who has been strangled by her partner and survives is 800% more likely to a victim of homicide by this same partner at a later time.

Once again, passing this statute keeps Montana on par with other states that have done the right thing. Most importantly, it would hold offenders accountable for their torturous behavior. Montana should not be in the last 9 states without a strangulation/suffocation statute.

I urge you to support SB 153. Let's do the right thing the first time.

Sincerely,

--Cat Otway

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on April 7, 2017 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Seth Berglee, Vice Chair (R)
Rep. Virginia Court, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Jennifer Eck (D)
Rep. Bill Harris (R)
Rep. Kathy Kelker (D)
Rep. Theresa Manzella (R)
Rep. Nate McConnell (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Matt Regier (R)
Rep. Lola Sheldon-Galloway (R)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Ellie Hill Smith (D)
Rep. Casey Knudsen (R)
Rep. Shane A. Morigeau (D)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 366, 4/3/2017; SB 368, 4/3/2017; SB 377, 4/3/2017
Executive Action:	HJ 29, SB 172, SB 251, SB 153, SB 250, SB 22

HEARING ON SB 366

Opening Statement by Sponsor:
00:00:30 Sen. Jill Cohenour (D), SD 42, opened the hearing on SB 366, Generally revise driver's license and state identification laws.
EXHIBIT(juh73a01)

00:01:49 Rep. C. Knudsen joined the meeting.

Proponents' Testimony:
00:05:23 Paul Nachman, Self
EXHIBIT(juh73a02)
EXHIBIT(juh73a03)

00:10:24 Tom Ebzery, Montana Airport Managers
00:12:13 Ed Bartlett, Billings Chamber of Commerce

Opponents' Testimony: None

Informational Testimony:
00:13:21 Sarah Garcia, Motor Vehicle Division (MVD); Department of Justice (DOJ)
00:13:44 Bryan Fox, Montana National Guard Association (MTNGA); Department of Military Affairs (DMA)

Questions from Committee Members and Responses:
00:14:12 Rep. Kelker
00:14:38 Sarah Garcia, DOJ
00:16:41 Rep. Wagoner
00:17:02 Sarah Garcia, DOJ
00:17:37 Rep. Court
00:18:30 Sen. Cohenour
00:19:51 Sarah Garcia, DOJ
00:21:21 Rep. Harris
00:21:49 Sen. Cohenour
00:24:52 Rep. Manzella
00:25:55 Sen. Cohenour
00:26:43 Rep. Morigeau joined the meeting.
00:27:32 Rep. C. Knudsen
00:27:47 Sarah Garcia, DOJ
00:28:59 Rep. Usher
00:29:19 Sen. Cohenour
00:31:15 Rep. Usher
00:31:47 Sarah Garcia, DOJ
00:32:19 Rep. Sheldon-Galloway
00:32:59 Sen. Cohenour
00:36:26 Rep. Eck
00:36:47 Sen. Cohenour
00:40:16 Rep. Kelker
00:40:45 Bryan Fox, MTNGA; DMA
00:42:41 Rep. Court

00:42:55 Sen. Cohenour
00:46:14 Chair Doane
00:46:26 Sarah Garcia, DOJ
00:46:33 Chair Doane
00:46:59 Sen. Cohenour

Closing by Sponsor:
00:48:10 Sen. Cohenour

HEARING ON SB 377

Opening Statement by Sponsor:
00:49:34 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 377, Revise laws related to bringing Montana into compliance with federal real ID act.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:
00:52:07 Sarah Garcia, Motor Vehicle Division (MVD); Department of Justice (DOJ)
00:52:31 Bryan Fox, Montana National Guard Association (MTNGA); Department of Military Affairs (DMA)

Questions from Committee Members and Responses:
00:52:58 Rep. Manzella
00:53:23 Sarah Garcia, DOJ
00:53:42 Rep. Court
00:54:18 Sarah Garcia, DOJ

Closing by Sponsor:
00:54:40 Sen. Fitzpatrick

HEARING ON SB 368

Opening Statement by Sponsor:
01:02:01 Sen. Tom Richmond (R), SD 28, opened the hearing on SB 368, Generally revise campaign practices laws.
EXHIBIT(juh73a04)
EXHIBIT(juh73a05)
EXHIBIT(juh73a06)

Proponents' Testimony: None

Opponents' Testimony:
01:13:22 Commissioner Jonathan Motl, Commissioner of Political Practices (COPP)
EXHIBIT(juh73a07)

01:32:29 C.B. Pearson, Common Cause Montana
EXHIBIT(juh73a08)

01:42:42 Al Smith, Montana Trial Lawyers Association (MTLA)
01:49:39 Erik Burke, Montana Education Association-Montana Federation of Teachers (MEA-MFT)

Informational Testimony: None

Questions from Committee Members and Responses:
01:51:37 Rep. Kelker
01:52:08 Sen. Richmond
01:55:20 Rep. Manzella
01:58:16 Sen. Richmond
02:03:26 Rep. Manzella
02:03:51 Al Smith, MTLA
02:05:54 Rep. Harris
02:06:02 Rep. Court
02:06:40 Sen. Richmond
02:09:08 Rep. Court
02:09:25 Jonathan Motl, COPP

Closing by Sponsor:
02:10:47 Sen. Richmond

Committee Business:
02:12:35 Chair Doane
02:13:17 Rep. Court

02:13:52 Recess
02:31:27 Reconvene

EXECUTIVE ACTION ON HJ 29

Discussion:
02:31:31 Helen Thigpen, Legislative Services Division (LSD)

02:32:31 **Motion:** Rep. Berglee moved that **HJ 29 DO PASS**.

02:32:38 **Motion:** Rep. Berglee moved that **HJ 29 BE AMENDED**.
EXHIBIT(juh73a09)

Discussion:
02:32:45 Helen Thigpen, LSD
02:33:28 Rep. Kelker
02:33:34 Rep. C. Knudsen

02:33:51 **Vote:** Motion carried 18-1 by voice vote with Rep. Eck voting no. Rep. Hill Smith and Rep. Sheldon-Galloway voted by proxy.

02:34:24 **Motion/Vote:** Rep. Berglee moved that **HJ 29 DO PASS AS AMENDED**. Motion carried 18-1 by voice vote with Rep. M. Regier voting no. Rep. Hill Smith and Rep. Sheldon-Galloway voted by proxy.

EXECUTIVE ACTION ON SB 172

Discussion:
02:35:18 Helen Thigpen, LSD

02:35:37 **Motion:** Rep. Berglee moved that **SB 172 BE CONCURRED IN**.

Discussion:
02:36:29 Chair Doane
02:36:44 Rep. Morigeau
02:37:32 Rep. B. Brown
02:38:04 Rep. C. Knudsen
02:38:25 Helen Thigpen, LSD

02:38:56 **Vote:** Motion carried 14-5 by roll call vote with Rep. B. Brown, Rep. Doane, Rep. Hill Smith, Rep. Morigeau and Rep. Mortensen voting no. Rep. Hill Smith and Rep. Sheldon-Galloway voted by proxy. Rep. Knudsen will carry the bill.

EXECUTIVE ACTION ON SB 251

02:40:17 Helen Thigpen, LSD

02:40:50 **Motion:** Rep. Berglee moved that **SB 251 BE CONCURRED IN**.

02:41:13 Chair Doane
02:41:25 Rep. Harris
02:42:18 Rep. Bishop

02:43:52 **Substitute Motion/Vote:** Rep. C. Knudsen moved that **SB 251 BE TABLED**. Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Hill Smith and Rep. Sheldon-Galloway voted by proxy.

EXECUTIVE ACTION ON SB 22

Discussion:
02:45:59 Helen Thigpen, LSD

02:46:29 **Motion:** Rep. Berglee moved that **SB 22 BE CONCURRED IN**.

Discussion:
02:46:37 Rep. Manzella
02:47:12 Rep. McConnell

02:48:18 **Vote:** Motion carried 18-1 by voice vote with Rep. Manzella voting no. Rep. Hill Smith and Rep. Sheldon-Galloway voted by proxy. Rep. McConnell will carry the bill.

EXECUTIVE ACTION ON SB 153

Discussion:
02:49:15 Helen Thigpen, LSD

02:49:35 **Motion:** Rep. Berglee moved that **SB 153 BE CONCURRED IN**.

Discussion:
02:49:43 Rep. Mortensen
02:50:34 Rep. Regier
02:51:11 Rep. Manzella
02:51:34 Rep. Mortensen
02:51:42 Rep. Kelker
02:52:02 Chair Doane
02:52:20 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
02:52:56 Rep. Usher

02:53:11 **Vote:** Motion carried 15-4 by roll call vote with Rep. Berglee, Rep. Harris, Rep. C. Knudsen and Rep. Manzella voting no. Rep. Hill Smith and Rep. Sheldon-Galloway voted by proxy. Rep. Garner will carry the bill.

EXECUTIVE ACTION ON SB 250

Discussion:
02:55:12 Helen Thigpen, LSD

02:55:45 **Motion:** Rep. Berglee moved that **SB 250 BE CONCURRED IN**.

Discussion:
02:55:51 Rep. C. Knudsen
02:56:12 Rep. McConnell
02:56:59 Helen Thigpen, LSD
02:57:59 Chair Doane
02:58:05 Rep. Morigeau

02:58:28 **Vote:** Motion carried 16-3 by roll call vote with Rep. C. Knudsen, Rep. Manzella and Rep. Mortensen voting no. Rep. Hill Smith and Rep. Sheldon-Galloway voted by proxy. Rep. Usher will carry the bill.

ADJOURNMENT

Adjournment: 03:00:11

_____
Sara Fleming, Secretary

sf

Additional Documents:

EXHIBIT(juh73aad.pdf)

Montana State Legislature

65th Montana Legislature - 2017

ADDITIONAL DOCUMENTS

Business Report

Signed by Chairman

Roll Call

Attendance

Standing Committee Reports

Tabled Bills

Fiscal Reports

Roll Call Votes

Proxy Forms

Visitor Registration

Additional Documents

Witness Statements that are not presented as exhibits. All informational items handed in after meeting. Petitions; etcetera.

- **Any documents which were submitted after the committee hearing has ended and/or was submitted late within 24 hours regarding information in the committee hearing.**

YOU MAY VIEW THE ORIGINAL DOCUMENTS

AT THE MONTANA HISTORICAL SOCIETY

MONTANA HISTORICAL SOCIETY ARCHIVES
225 N. ROBERTS
HELENA, MT 59620-1201
2017 LEGISLATIVE SESSION
E-DOCUMENT SPECIALIST: SUSIE HAMILTON

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Friday, April 7, 2017 **Time:** 8:00 AM
Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:
SB 366 - Generally revise driver's license and state identification laws - Sen. Jill Cohenour
SB 368 - Generally revise campaign practices laws - Sen. Tom Richmond
SB 377 - Revise laws related to bringing Montana into compliance with federal real ID act - Sen. Steve Fitzpatrick

EXECUTIVE ACTION TAKEN:
HJ 29 - Do Pass As Amended
SB 172 - Be Concurred In
SB 251 - Be Tabled
SB 22- Be Concurred In
SB 153 - Be Concurred In
SB 250 - Be Concurred In

Comments:

REP. Alan Doane, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 4/7/17

NAME	PRESENT	ABSENT/EXCUSED
REP. SETH BERGLEE, VICE CHAIR	✓	
REP. VIRGINIA COURT, VICE CHAIR	✓	
REP. KATHY KELKER	✓	
REP. BOB BROWN	✓	
REP. BARRY USHER	✓	
REP. DALE MORTENSEN	✓	
REP. JENNY ECK	✓	
REP. LAURIE BISHOP	✓	✓
REP. ELLIE HILL SMITH	✓	✓
REP. NATE MCCONNELL	✓	
REP. KIRK WAGONER	✓	
REP. MATT REGIER	✓	
REP. BILL HARRIS	✓	
REP. LOLA SHELDON-GALLOWAY	✓	
REP. THERESA MANZELLA	✓	✓
REP. CASEY KNUDSEN	✓	✓
REP. ZAC PERRY	✓	✓
REP. SHANE MORIGEAU	✓	✓
REP. ALAN DOANE, CHAIR	✓	

19 MEMBERS

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

SB 251 - Generally revise laws related to short term rental facilities - Sen. Tom Facey

by motion, on **Friday, April 7, 2017** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Sara Fleming
(For the Committee)

CW
(For the Chief Clerk of the House)

4:30 (Time) / 04-10-17 (Date)

April 10, 2017 (4:21pm) Sara Fleming, Secretary Phone: 444-4709

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Joint Resolution 29** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Alan Doane, Chair

And, that such amendments read:

1. Page 2, line 4.
Following: "Legal Services Association,"
Insert: "Montana Association of Realtors,"

- END -

Committee Vote:
Yes 18, No 1
Fiscal Note Required __

HJ0029004SC.hts

9:30 04-11-17

HOUSE STANDING COMMITTEE REPORT

April 11, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 123** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Casey Knudsen

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB012300ISC17703.hts

12:15 04-11-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 236** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Kirk Wagoner

And, that such amendments read:

1. Page 1, line 24.
Following: line 24
Insert: "WHEREAS, hunting, fishing, and trapping are a valued part of Montana's harvest heritage; and

WHEREAS, contemporary hunting, fishing, and trapping practices play a crucial, cost-effective role in sound wildlife management and conservation; and

WHEREAS, hunting, fishing, and trapping provide subsistence, life skills, health, and self-reliance central to the well-being of thousands of Montanans; and

WHEREAS, hunting, fishing, and trapping aid significantly in controlling wildlife populations, reducing wildlife-related conflicts, and preventing harm caused by wildlife to persons, property, crops, and livestock; and

WHEREAS, conservation fees paid by hunters, anglers, and trappers support wildlife management, conservation, and enforcement programs that are beneficial to all wildlife species in Montana; and

WHEREAS, in addition to all of the above, hunting, fishing, and trapping provide meaningful outdoor recreation opportunities that connect people to the environment unlike any other activity; and

WHEREAS, the people of Montana find it necessary to enact this amendment to the Montana Constitution solely to protect hunting, fishing, and trapping from undue bans or restrictions;

Committee Vote:
Yes 10, No 9
Fiscal Note Required __

SB0236001SC15257.hts

11:15 04-11-17

and

WHEREAS, this amendment to the Montana Constitution is intended to preserve effective means, methods, and seasons of hunting, fishing, and trapping while fully respecting private property rights and other land and water uses, and allowing for necessary and proper management and conservation laws and regulations; and

WHEREAS, this amendment to the Montana Constitution is not intended to provide a right to impede or supersede other uses of land or water, such as farming, ranching, logging, irrigation, public works, or development; and

WHEREAS, this amendment to the Montana Constitution is not intended to require the state to offer the same rights and licensing structure to nonresidents as it does to residents; and

WHEREAS, this amendment to the Montana Constitution is not intended to delay or thwart existing wildlife control measures, such as those employed by game wardens and wildlife services to immediately or effectively protect persons or property from harm caused by wildlife."

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 310** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Shane Morigeau

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB0310001SC17716.hts

CW 12:15 04-11-17

HOUSE STANDING COMMITTEE REPORT

April 11, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Joint Resolution 35** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Alan Doane, Chair

And, that such amendments read:

1. Page 2, line 11.
Following: "Agriculture,"
Insert: "federal and"

2. Page 2, line 12.
Following: "agencies,"
Insert: "Indian tribes,"

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

HJ0035001SC.hts

1:10 04-11-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 366** (third reading copy -- blue)

be concurred in as amended.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Barry Usher

And, that such amendments read:

1. Title, page 1, line 7 through line 8.
Strike: "A" on line 7 through "DELAYED EFFECTIVE DATE" on line 8
Insert: "EFFECTIVE DATES"

2. Page 1, line 29.
Strike: "and"

3. Page 2, line 1.
Following: "$50"
Insert: "; and
(iii) for a person who renews a standard driver's license or a standard identification card under 61-5-111(3)(c) between June 1, 2017, through December 31, 2017, and is applying for a REAL ID-compliant driver's license or identification card between January 1, 2018, and June 30, 2018, the additional fee is $25"

4. Page 2, line 19.
Following: line 19
Insert: "NEW SECTION. **Section 4. Contingent voidness.** If the REAL ID Act of 2005, Public Law 109-13, is repealed or if the federal government notifies the state of Montana that compliance with the REAL ID Act is not required, then [this act] is void."
Renumber: subsequent sections

Committee Vote:
Yes 15, No 4
Fiscal Note Required __

SB0366001SC17704.hts

aw 1:10 04-11-17

5. Page 2, line 21.
Following: **"Effective date"**
Insert: **"-- contingency"**
Strike: "[This act]"
Insert: "(1) Except as provided in subsection (2), [this act]"

6. Page 2, line 21.
Following: line 21
Insert: "(2) If before January 1, 2018, the state of Montana receives an extension from compliance with the REAL ID Act of 2005, Public Law 109-13, from the department of homeland security, [this act] is effective July 1, 2019. Notification of the extension must be sent to the Montana department of justice and the code commissioner."

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 368** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Theresa Manzella

And, that such amendments read:

1. Page 9, line 4.
Strike: "commissioner"
Insert: "attorney general"

2. Page 9, line 6.
Following: "chapter."
Insert: "An agreement hiring or retaining an attorney by the commissioner under this section must be in writing and must include the terms of the attorney's compensation. The agreement must be posted to the commissioner's website, and on the first day of each month, the commissioner shall post on the website a list of all costs and expenses incurred by any attorneys hired or retained under this section."

3. Page 9, line 6 through line 7.
Strike: "prosecutions" on line 6 through "County" on line 7
Insert: "civil or criminal actions must be filed in the state district court of the county in which the defendant resides or in the district court for Lewis and Clark County if the defendant resides out of state"

4. Page 9, line 13.
Following: "complaints;"
Insert: "and"

Committee Vote:
Yes 10, No 9
Fiscal Note Required __

SB0368001SC16510.hts

2:00 04-11-17

5. Page 9, line 16 through line 18.
Strike: "; and" on line 16 through "chapter" on line 18

6. Page 12, following line 3.
Insert: "(3) The commissioner is one party in the appeal process and the candidate, political committee, or other respondent to the preliminary order of noncompliance or decision is the other party."
Renumber: subsequent subsections

7. Page 12, line 4.
Following: "(a)"
Insert: "The commissioner shall develop and maintain a list of at least 10 individuals who are willing and able to serve as a mediator in an initial decision appeal."
Following: "must"
Strike: "have been"
Insert: "be"

8. Page 12, line 5.
Following: "must"
Strike: "have scheduled"
Insert: "schedule"

9. Page 12, line 6.
Following: "parties."
Insert: "If the parties cannot agree on a mediator, the respondent to the preliminary order of noncompliance or decision shall select the mediator.
(b)"
Renumber: subsequent subsections

10. Page 12, line 12.
Strike: "and shall jointly share the costs of the mediator"
Insert: "as incurred separately by each party. The fees and costs due to the mediator must be equally divided between the parties and billed to each party by the mediator.
(d)"
Renumber: subsequent subsections

11. Page 12, line 30.
Strike: "alleged violation occurred"
Insert: "subject of the alleged violation resides"

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 22** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Nate McConnell

- END -

Committee Vote:
Yes 18, No 1
Fiscal Note Required __

SB0022001SC16397.hts

CW 11:45 04-07-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 153** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Frank Garner

- END -

Committee Vote:
Yes 15, No 4
Fiscal Note Required __

SB0153001SC16501.hts

PM 11:45 04-07-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 172** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Casey Knudsen

- END -

Committee Vote:
Yes 14, No 5
Fiscal Note Required __

SB017200ISC17703.hts

AW 11:45 04-07-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 250** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Barry Usher

- END -

Committee Vote:
Yes 16, No 3
Fiscal Note Required __

SB0250001SC17704.hts

11:45 04-07-17

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 172 DATE 4/7/17

MOTION Be concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR	✓		
REP. KATHY KELKER	✓		
REP. BOB BROWN		✓	
REP. BARRY USHER	✓		
REP. DALE MORTENSEN		✓	
REP. JENNY ECK	✓		
REP. LAURIE BISHOP	✓		
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL	✓		
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		✓
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY	✓		
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB251 DATE 9/7/17

MOTION ~~Be Concurred In~~ Table

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		✓
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB153 DATE 4/7/17

MOTION Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR		✓	
REP. VIRGINIA COURT, VICE CHAIR	✓		
REP. KATHY KELKER	✓		
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK	✓		
REP. LAURIE BISHOP	✓		✓
REP. ELLIE HILL-SMITH	✓		
REP. NATE MCCONNELL	✓		
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓	✓	
REP. BILL HARRIS	✓	✓	✓
REP. LOLA SHELDON-GALLOWAY	✓	✓	
REP. THERESA MANZELLA		✓	
REP. CASEY KNUDSEN	✓	✓	
REP. ZAC PERRY	✓		
REP. SHANE MORIGEAU	✓		
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 250 DATE 4/7/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR	✓		
REP. KATHY KELKER	✓		
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN		✓	
REP. JENNY ECK	✓		
REP. LAURIE BISHOP	✓		
REP. ELLIE HILL-SMITH	✓		✓
REP. NATE MCCONNELL	✓		
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		✓
REP. THERESA MANZELLA		✓	
REP. CASEY KNUDSEN		✓	
REP. ZAC PERRY	✓		
REP. SHANE MORIGEAU	✓		
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Virginia Court.

BILL	AYE	NO
HJ29 AMEND	X	
HJ29 AS AMEND	X	
SB172		X
SB 251 TO TABLE		X
SB ~~22~~ 22	X	
SB153	X	
SB250	X	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Nate McConnell for any amendments proposed on this date.

Rep. Ellie Hill Smith
(Signature)

Date 4-7-17

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Berglee.

BILL	AYE	NO
HJ 00290 1.AHT	X	
HJ 29	X	
SB 172	X	
SB 251 Table	X	
SB 22	X	
SB 153	X	
SB 250	X	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Doane for any amendments proposed on this date.

Rep. Jola Galloway (Signature)

Date 4/7/17

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, April 7, 2017
SB 368 - Generally revise campaign practices laws
Sponsor: **Sen. Tom Richmond**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
AJ Smith	MTLA		X	
CB Pearson	Self - Common Cause SWM		X	
Bill Burke	MEA-MFT		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, April 7, 2017
SB 366 - Generally revise driver's license and state identification laws
Sponsor: **Sen. Jill Cohenour**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Paul Nachman	Self	✓		
BRYAN FOX				✓
Tom Ebzery	MT Airport Mgrs	✓		
Spook Stang	MCM	✓		
ED BARTLETT	BILLINGS CHAMBER	X		
Sarah Garcia	MVD- DOJ			✓

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, April 7, 2017
SB 377 - Revise laws related to bringing Montana into compliance with federal real ID act
Sponsor: **Sen. Steve Fitzpatrick**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
BRYAN FOX				✓
Sarah Garcia	MVD- DOJ			✓
MARK BAKER	DELTA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

ADDITIONAL DOCUMENTS

511 East Sixth Avenue
Helena, MT 59601
April 7, 2017

Testimony Opposing SB 368

Chairman Doane, Members of the House Judiciary Committee:

For the record I am Claudette Morton, Volunteer Public Policy Chair for the Montana League of Women Voters. We are a non-partisan citizen group who believes in open government with fair access for all. This is especially important because I know SB 368 has sponsors from both parties, but we don't need this bill. Montana's election finance laws are in place and working well.

Proponents will tell you that you need to raise the campaign limits to satisfy the courts, but Montana citizens are not rich and raising the limits will only allow more special interest groups to have more say in our elections.

The section which adds a mediator after the Commissioner of Political Practices makes an initial decision is a delaying tactic and a costly one. When the parties go to mediation, each side will have to pay half. Mediation is not inexpensive and so more violations could go unreported and the quality of our elections will deteriorate.

I am sorry I can't be at the hearing today, but I have a family commitment. For the reasons stated above and others from others' testimony, we urge you to oppose SB368.

Thank you.